

Planning Commission Date: April 9, 2003

Item No.

7.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

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Public Hearing: Yes: X No: _____

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TITLE: CONSIDERATION OF AMENDMENTS TO THE GENERAL PLAN AND MIDTOWN SPECIFIC PLAN, AMENDMENTS TO THE ZONING ORDINANCE TEXT AND MAPS, AND RELATED DRAFT NEGATIVE DECLARATION (P-GM2003-1, P-ZT2003-1, P-ZC2003-1, P-EA2003-1)

Proposal: Proposed Ordinance No. 38.761 regarding miscellaneous zoning code text amendments and amendments to the General Plan and zoning maps properly designating existing parks in the POS classification and adding the remainder of the Serra Center to the Midtown Area.

Location: Citywide

RECOMMENDATION: Recommend the following to the City Council:

1. Adopt a resolution approving the Negative Declaration (EIA NO. P-EA2003-1);
2. Adopt a resolution approving General Plan and Midtown Specific Plan map amendments (P GM2003-1) relating to properly designating existing parks in the POS classification;
3. Adopt a resolution approving General Plan and Midtown Specific Plan map amendments (P-GM2003-1) affecting the Midtown Plan Area relating to the addition of three (3) Serra Center parcels to the Midtown Specific Plan Area;
4. Adopt Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P-ZT2003-1 and P-ZC2003-1) affecting Midtown Plan Area relating to text amendment item nos. 8, 14, 19, 20, 26, 27, 28, 29, 30, and 34; and
5. Adopt Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P- ZT2003-1 and P-ZC2003-1) not affecting Midtown Plan Area relating to text amendment item

**CONSIDERATION OF AMENDMENTS TO THE GENERAL PLAN AND MIDTOWN SPECIFIC PLAN,
AMENDMENTS TO THE ZONING ORDINANCE TEXT AND MAPS, AND RELATED DRAFT NEGATIVE
DECLARATION (P-GM2003-1, P-ZT2003-1, P-ZC2003-1, P-EA2003-1)**

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**nos. 1, 3, 4, 6, 7, 11, 13, 15, 17, 18, 21, 22, 23, 24, 25, 31, 32, and
35.**

Applicant: City Initiated

Attachments: Ordinance No. 38.761 matrix, Zoning Ordinance sections, sectional
district maps, and CEQA Initial Study and Draft Negative Declaration

BACKGROUND

On August 14, 2002, the Planning Commission reviewed Zoning Ordinance Amendment No. P-ZT2002-6 (Ordinance No. 38.760). This amendment addressed 34 issues that required modifications to the zoning code text. They can be summarized as inconsistencies in the non-conforming buildings and structures provisions, codification of past use determinations and the addition of new uses, clarifications of accessory buildings and structure provisions, clean-up of inconsistencies within the Midtown zoning districts, and clarifications of existing development standards and provisions that had required interpretation by staff. The City Council approved Ordinance No. 38.760 during the second reading of their meeting on September 17, 2002.

Ordinance No. 38.760 was presented as a first phase of ongoing, necessary amendments to the zoning code to improve its effectiveness as a regulatory tool, recognize it as a dynamic and living documents and phase the cost and effort of a comprehensive update. This next phase discussed herein involves other necessary zoning text amendments and, in addition, amendments to the General Plan and zoning maps. All of the text amendments have been packaged into Ordinance No. 38.761 and the map amendments in the form of sectional districts for review by the Planning Commission in this packet.

On February 26, 2003, staff presented the proposed amendments to the Zoning Ordinance text and General Plan, Specific Plan and zoning map amendments to the Planning Commission and discussion of the changes ensued. At this meeting, staff sought input from the Planning Commission and consensus was reached providing direction to staff.

On March 26, 2003, staff presented the proposed amendments to the Planning Commission as a public hearing item. However, the amendments were continued to the April 9th meeting due a missing set of attachments in one of the Commissioner's agenda packet.

DISCUSSION

This second phase and group of zoning code text amendments are presented in the attached matrix and are summarized below:

- Clean-up of inconsistencies within the Mixed Used ("MXD"), Multi-Family Very High Density ("R4"), Office Overlay ("OO") and Transit-Oriented Development Overlay ("TOD") districts of the Midtown Specific Plan.

CONSIDERATION OF AMENDMENTS TO THE GENERAL PLAN AND MIDTOWN SPECIFIC PLAN, AMENDMENTS TO THE ZONING ORDINANCE TEXT AND MAPS, AND RELATED DRAFT NEGATIVE DECLARATION (P-GM2003-1, P-ZT2003-1, P-ZC2003-1, P-EA2003-1)

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- Clarifications to existing development standards and provisions that have required interpretation by staff.
- Addition of new provisions addressing issues such as code compliance (Administrative Citations) and non-commercial wireless communication facilities in residential districts.
- Amendments to and incorporation of levels of approval for asphalt composition roof material in the hillside, temporary office and storage trailers, and projects in Midtown zoning districts and for hillside variances.
- Provisions to allow consistency within the zoning code and state regulations regarding second family units and family child care homes.
- Incorporation of amendments to implement the recently adopted Housing Element and the Child Care Master Plan.

Further review of the above-proposed text amendments by staff since the February 26, 2003 discussion has resulted in several changes not requested by the Planning Commission, the majority being minor in nature. The discussion of these amendments and the proposed changes are on the matrix, dated March 21, 2003, in bold type and pertain to the following issue numbers 8, 15, 20 and 21.

In addition, staff has prepared 5 new zoning text amendments that have arisen since the February 26, 2003 discussion and or had not yet prepared. They are as follows:

1. Table of Contents updated to reflect new topics being added to General Provisions section and deletion of the Density Bonus section. (See No. 31 on matrix)
2. Modification of the use permit revocation procedure (See No. 32 on matrix).
3. The addition of conference centers as conditional uses in the Industrial Park "MP" District (See No. 33 on matrix).
4. Provisions for an in-lieu housing fee for residential developments that are unable to provide affordable housing (See No. 34 on matrix).
5. The addition of tutoring centers as conditional uses in the Industrial Park "MP" District (See No. 35 on matrix).

ISSUES

At the February 26, 2003 meeting, the Planning Commission provided specific feedback regarding several of the proposed zoning text amendments. Staff has performed the necessary research to address the issues, some of which have resulted in changes to the proposed language reviewed on February 26th. Planning Commission's concern and staff's recommended changes are in the

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matrix, dated March 21, 2003, in bold type and pertain to issue numbers 1, 4, 6, 7, 11, 18, 19, 20, 24, 25, 27, and 29.

With respect to issue no.1 (antenna regulations) and as noted on the matrix, several changes have been made to reflect comments from the Telecommunications Commission, Telecommunications Commission Subcommittee, CEPAC, the CEPAC Subcommittee, and legal staff. In addition, these changes have been reviewed by the CAC, as requested by the Planning Commission. Since these various boards have different focuses, there are points of disagreement in the version being forwarded to the Planning Commission. The points relate to aesthetics – continuing to allow guy wires for TV antennas on rooftops (staff), no limit on the number of antennas on rooftops (staff and CAC) and allowing antennas up to 55 feet in height (CAC).

There were no concerns raised or changes proposed to the General Plan, Specific Plan and zoning map amendments at the February 26, 2003 meeting. Therefore, the following summaries and attached sectional district maps remain unchanged and as proposed at the previous Planning Commission meeting:

1. The 24 parcels below are proposed for rezoning, the majority to Public Open Spaces (POS) because they are public parks. To do so requires amendments to most of their General Plan land use designations and all of their zoning map classifications. With the completion last month of converting the City's zoning map to an electronic, parcel-based GIS layer, the map is presented at a finer level of detail and illustrates the need for these clean-up changes.

APN	Existing Zoning	Proposed Zoning	Existing GP Designation	Proposed GP Designation	Explanation
2231009	POS	M2	PR	Manufacturing	Correction – RR right-of-way should not be POS.
2231008	POS	M2	PR	Manufacturing	Correction – RR right-of-way should not be POS.
2234002	R1-6	POS	PR	No change	Correction – Part of Hall Park.
2234003	R1-6	POS	SFL Density	PR	Correction – Part of Hall Park
2237039	MP	POS	MP	PR	Berryessa Creek Trail
2237035	MP	POS	MP	PR	Berryessa Creek Trail
2203029	R1-6	POS	SFL Density	PR	Berryessa Creek Trail
2820001	R1-6	POS	SFL Density	PR	Berryessa Creek Trail
2820002	A	POS	PR	No change	Correction–Hidden Lake Park
2231016	M2	POS	Manufacturing	PR	Berryessa Creek Trail
2821060	R2	POS	MFM	PR	Berryessa Creek Trail
2812001	TC	POS	TC	PR	Berryessa Creek Trail
2812002	TC	POS	TC	PR	Berryessa Creek Trail
2812003	TC	POS	TC	PR	Berryessa Creek Trail

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2801002	TC	POS	TC	PR	Berryessa Creek Trail
8629022	MP	POS	MP	PR	Berryessa Creek Trail
8629038*	M2	POS	Manufacturing	PR	Berryessa Creek Trail
8630027	M2	POS	Manufacturing	PR	Berryessa Creek Trail
8630046	M2	POS	Manufacturing	PR	Berryessa Creek Trail
8630028*	M2	POS	Manufacturing	PR	Berryessa Creek Trail
8632028	M2	POS	Manufacturing	PR	Berryessa Creek Trail
8643002	A	POS	PR	No change	Coyote Creek Trail
8613001	R1-6	POS	SFL Density	PR	Penitencia Creek Trail
8822011	R1-6	POS	SFL Density	PR	Correction—Ben Rodgers Park

*Portion of parcel being rezoned.

2. The following three parcels in Serra Center were inadvertently excluded in the Midtown Specific Plan Area. To add them requires a General Plan land use map amendment to modify the Midtown boundaries, a corresponding amendment to the Specific Plan land use map to modify boundaries and add the office overlay to the parcels, and a zoning map amendment to add the Office Overlay (“OO”) District; atop the existing General Commercial (“C2”) District, consistent with other parcels in Serra Center:

APN	Existing Zoning	Proposed Zoning	Existing GP Designation	Proposed GP Designation	Explanation
8607026	C2	C2-OO	General Commercial	General Commercial w/in Midtown Area	Correction – Parcels are part of Serra Center
8607028	C2	C2-OO	General Commercial	General Commercial	Correction – Parcels are part of Serra Center
8607031	C2	C2-OO	General Commercial	General Commercial w/in Midtown Area	Correction – Parcels are part of Serra Center

ENVIRONMENTAL REVIEW

An Initial Study and Draft Negative Declaration were prepared for the project. The commenting period began on March 13, 2003 and closed on April 1, 2003. Staff did not receive any comments in regards to the proposed zone text amendments. The proposed zone text amendments, General Plan Map Amendments, and zone changes had the following impacts that were considered to be less than significant:

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There would be a less than significant impact in regards to aesthetics, as a result of the zone text amendments, general plan map amendments and zone change, as there could be an increase in structures and larger buildings throughout the City, however, they would be subject to further review at time of development application, at which time potential impacts can be reduced.

There would be a less than significant impact in regards to air quality, as the City could potentially experience a slight increase in vehicle trips throughout the City, however, because the amount of trips is relatively small and the further air quality analysis would be identified and analyzed further, the zone text amendment and zone changes in regards to air quality would be a less than significant impact.

There would be a less than significant impact in regards to biological resources as the rezoning of lands to park and open space could potentially increase the number of park and trail users in areas near the Berryessa creek. However, this creek has been defined previously in the Creek Trails Master Plan.

There would be a less than significant impact in regards to geology and soils, as lands in the Santa Clara Valley are located in a seismic area and any potential increase in buildings or structures is required to conform and adhere to state and local building codes.

In regards to population and housing, the new text amendments could incrementally increase the housing units, however, due to scarcity of vacant developable lands the increase will be less than significant.

The impacts to recreation will be impacted as the zone changes and text amendments will add more recreation users, however, this will be offset by park fee requirements for new housing units, thus it will be less than significant.

There would be a less than significant impact in regards to transportation and traffic, as a result of the zone text amendments and zone changes, there could be an increase in traffic throughout the city, however as part of the development process, traffic will be analyzed and mitigated as needed. In addition all new projects will be required to conform to City parking standards.

There would be a less than significant impact in regards to utilities, as the rezoning of land near the Serra Center could potentially increase demand on utilities, however, any developments will have to compensate for these new flows through upgrades or increase in sizing of existing utilities in the immediate area.

Any additional comments received will be presented at the Planning Commission hearing and any other comments received through April 1, 2003 will be presented at the City Council hearing.

RECOMMENDATION

Close the Public Hearing. Recommend the following to the City Council:

1. Adopt a resolution approving the Negative Declaration (EIA NO. P-EA2003-1);
2. Adopt a resolution approving General Plan and Midtown Specific Plan map amendments (P-GM2003-1) relating to properly designating existing parks in the POS classification;

**CONSIDERATION OF AMENDMENTS TO THE GENERAL PLAN AND MIDTOWN SPECIFIC PLAN,
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3. Adopt a resolution approving General Plan and Midtown Specific Plan map amendments (P-GM2003-1) affecting the Midtown Plan Area relating to the addition of three (3) Serra Center parcels to the Midtown Specific Plan Area;
4. Adopt Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P-ZT2003-1 and P-ZC2003-1) affecting Midtown Plan Area relating to text amendment item nos. 8, 14, 19, 20, 26, 27, 28, 29, 30, and 34; and
5. Adopt Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P-ZT2003-1 and P-ZC2003-1) not affecting Midtown Plan Area relating to text amendment item nos. 1, 3, 4, 6, 7, 11, 13, 15, 17, 18, 21, 22, 23, 24, 25, 31, 32, and 35.

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Summary Matrix of Proposed Zoning Code Amendments April 9, 2003

PAGE NO.	ISSUE NO.	ISSUE	AFFECTED SECTION(S)	PROPOSED SOLUTION
1-12	1	<p>Antennas in residential areas are currently not regulated, do not require a Use Permit and recent code enforcement cases have brought attention to their visual impact due to height and design.</p> <p>PC Concerns: Issues regarding antenna color and number of; installing without an engineer's stamp, but as per manufacturers specs; and satellite and locations for MF projects</p>	<p>2.07-1 to -3 2.26-1.2 2.58-5.2 2.62-1 2.67 (a) 2.68-1 2.75-1 2.78-4 55.02-3 54.09-16 57.02-15.1</p>	<p>Add non-commercial wireless communication facilities as an accessory structure with a height standard of 25 feet above maximum building height in said district, unless telescoped design. Prohibit guy wires for TV antennas on roof and other antennas over 20 feet in height from grade. Provide size, setbacks and quantity restrictions. Exempt from use permit approval. In addition, make reference in the height exception section that wireless masts are regulated under accessory structure section. Create new definitions to cover type of residential antennas and related terms and distinguish between telecommunication facilities, as well as eliminate telecom term.</p> <p>Staff Changes: Prohibit guy wires for antennas over 20 feet in height from grade; add color restrictions; restrict number to two over 20 feet in height; require removal if abandoned; prohibit easement encroachment; provide statement of purpose to standards; add definitions for parcel and public right-of-way; and add language to preclude satellite dishes preempted by federal law from requiring a use permit if the location between a structure and a public right-of-way is the only unobstructed location available to receive a signal.</p>
	2	Deleted.		
5, 7, 13	3	Code states that all accessory buildings and	2.69-.5	Amend the definition of rear yard, side yard, and yard to

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		structures are measured from the eaves, however it is unclear whether a main building is measured from the eaves when determining setbacks.	2.79 2.81 2.82 55.04-11(b) to (f)	reflect that measurements are from the walls, not eaves. Modify language in Section 55 (Exceptions) to state building additions setbacks are measured from exterior walls, not eaves. Retain eaves setback for accessory buildings and structures to ensure no encroachment into 3-foot setback to neighboring lot.
9, 14	4	Recent Ordinance 38.760 included pools and spas in the 30% maximum rear yard coverage. However, further research reveals the size of most pools exceeds 30% of the rear yard and this would prohibit smaller lots from having pools and spas. PC Concerns: Clarification needed for excluding in-ground spas as well as in-ground pools.	54.09 54.09-11 54.09-15	Exclude in-ground pools, in-ground spas and associated decking (if not more than 18" off the ground) from the rear yard 30% allowance. Above-ground pools and above-ground spas, pool equipment units, and A/C units would not be exempt because they project more than 18" off the ground and are similar to other non-exempt accessory structures. Staff Changes: Added the phrase "in-ground" before spas.
	5	Deleted		
15-16	6	Codify recent determination by the Planning Commission to allow only tri-laminate asphalt composition in PUD's and "S" Zones. In addition, make clear that no asphalt composition is allowed anywhere in the hillside consistent with past Planning Commission actions. PC Concerns: Issues concerning wood shake and tri-laminate in the Hillside and wood shake throughout the City.	42.10-2(C)	Amend the re-roof permit streamlining section to state that tri-laminate asphalt composition is (1) allowed in the valley floor "S" Zones districts and PUD's, (2) is not allowed in the any hillside PUD's (3) is not allowed in the R1-H hillside district on lots east or west of crestline regardless of lot size. Staff Changes: Allow tri-laminate asphalt composition throughout the hillside and disallow wood shake throughout the City except when listed as a required roof material in a PUD

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				development standard. Note, asphalt composition of any kind (including tri-laminate) is still not allowed in commercial and industrial districts without PC approval.
17-23	7	<p>Incorporate new Housing Element policy direction:</p> <ul style="list-style-type: none"> From Housing Element Policy B-I-1: Pursue a text amendment to allow housing at densities of up to 40 units per acre as a permitted use within the TC district (currently it is listed as conditional use). <p>PC Concerns: Need to state a minimum density to residential permitted uses of 20 or 25.</p> <ul style="list-style-type: none"> From Housing Element Policy C-I-3: Amend density bonus ordinance, to delete the DB combining district and to allow instead density bonuses in all districts where housing is allowed. Must conform to State law (AB 1866). From Housing Element Policy C-I-5: Amend to define the term "group dwellings" as 	<p>22.02-26.1 22.04-7</p> <p>3.02 41.00 (all) 54.20 (all)</p> <p>2.36</p>	<p>Staff Changes:</p> <ul style="list-style-type: none"> Revise text in the conditional uses list, to specify residential developments of 1-20 units per gross acre. Add residential developments of 21-40 units per gross acre to permitted uses list in TC. The reference to gross acreage is consistent with other density designations. Add a minimum density to be exempt from use permit to implement Housing Element identified housing opportunity sites. Remove DB combining district from Section 3 of Zoning Ordinance; move DB section to the General Provisions section of the Zoning Ordinance, since it now applies to all districts where housing is allowed, without requiring a zone change to an overlay district; renumber; remove references to overlay district; clarify wording; make code references consistent in format; add references to maximum allowable densities in zoning districts that allow residential development; tie agreement recordation to residential occupancy, rather than within 60 days of project approval. Revise definition accordingly. Group dwellings are already listed as a conditional use in MXD.

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		including homeless shelters and conditional housing. Identify group dwellings as a conditionally permitted use in the recently created MXD district as in the R3 and R4 districts.		
24-27	8	<p>To better promote high density residential development and efficient use of land, allow tandem parking in certain situations.</p> <p>PC Concern: The term "stalls" is confusing.</p>	<p>38.06-3(a) 38.06-3(a)(3) 38.06-3(b)(3) 38.06-3(c) 7.09-1.5(c) 7.09-4 8.06-2.5(c) 8.06-3 to 8.06-6</p>	<p>Allow two (2) deep tandem parking for residential uses in MXD projects, R3 and R4 districts and prohibit for non-residential or guest parking requirements. Tandem stalls shall be assigned and marked for residents only. Provide consistency among MXD, R3, and R4 districts regarding requiring covered spaces and crediting on-street parking for required residential parking. Tandem parking only allowed for residential units.</p> <p>Staff Changes: To be consistent substituted the term "stalls" with "spaces". In addition, established a depth for tandem parking spaces.</p>
	9	Deleted		
	10	Deleted		
28	11	<p>The zoning ordinance sets forth violation penalties that are cumbersome to enforce and have high staff costs. Need simpler and quicker alternative.</p> <p>PC Concerns: Increase the number of days to comply from</p>	63.07	<p>Add a new section to Enforcement Chapter called "Administrative Citations" and provide an administrative process and a schedule of fines that may be imposed if a property or building doesn't comply within a prescribed time.</p> <p>Staff Changes:</p>

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		15 to 31; clarify 1 year rather than 12 months; allow inflationary fine increase each year; and reference other city's penalties for lack of fine payment.		Did not change number of days because same violations do not require more than 15 days – other violations that do can be given more time if warranted by staff. Fine amounts are set by Government Code. Other remedies are included in the NBO section of that this ordinance references.
	12	Deleted		
29	13	Front yard setback in C1 currently refers to R districts for provisions, but this would imply different setbacks, as little as zero, if certain residential zoning districts were referenced. Therefore there is need to specify the front yard setback.	18.04-2	Delete reference to residential section for front yard setback and insert twenty 20 feet.
24, 30	14	Inadvertently left out duplexes as prohibited uses in MXD and close loophole for parcels than 20,000 SF.	38.04-4.2 38.05-4 38.06-3 (a)	Add duplexes to prohibited uses in the MXD District and add language to close loophole if parcel is less than 20,000 SF.
31-40	15	Due to differences in traffic and parking impacts and demands and to clearly ascertain in which districts full body massage is allowed in conjunction with medical offices, separate out medical and dental offices from professional offices in all zoning districts. In addition, difference between clinics, laboratories and medical offices needs to be clarified.	2.58-1 2.58-1.1 2.58-1.2 2.58-1.3 18.02-27.1 18.03-8.1 19.02.26 22.02-19.1 30.02-3.1 35.02-6	Provide a definition of medical and dental offices, clinics and laboratories. Call out medical and dental offices as permitted uses in C1, C2, MXD, and TC. Call out medical and dental clinics as conditional uses in C1. Call out medical and dental offices, clinics and laboratories as permitted uses in M1, M2, and MP. Add parking requirements for medical clinics and laboratories. Medical and dental clinics are proposed to not be allowed in the TC district, however offices would be allowed.

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			38.02-3 53.23-3.3 53.23-4.1	Staff Changes: Added medical and dental office as permitted uses in MXD district and made minor change to definition language to include the term “place” when referencing buildings instead of structures.
	16	Deleted		
41-43	17	The level of review needs to be clarified for temporary office and storage trailers related to construction that do not meet the provisions established to administratively approve them.	42.10-2(k)(4)	Amend the permit streamlining section to reflect that if the application does not meet the requirements of administrative (staff) approval, the application shall be reviewed by the Planning Commission Subcommittee.
44-46	18	Amend variance section to allow City Council to have final approval authority for hillside variances rather than the Planning Commission since the City Council has final authority on all “S” Zone applications, and if the PC denies a variance it would go onto Council anyway. Eliminate outdated language regarding 40 days to decision. Amend Conditional Use Permit section to delete 40-day hearing commencement date, and to update the public hearing notification code reference. Currently this reference addresses only a portion of the public hearing notification procedures; the text amendment would reference all the procedures outlined in the Zoning Ordinance “Notice and Appeal” section (Sec. 64).	58.00 57.03-3	Remove text to specify Planning Commission approval authority for variances not involving the Hillside, and to specify City Council approval authority for those that do involve the Hillside. Indicate the procedure, including a requirement for public hearing at both the Planning Commission and City Council levels of review. Delete the requirement for the Planning Commission to render its decision within 40 days of the application filing date. Staff Explanation: Reasons to delete the 40-day decision time frame: (1) By State law, the City has 30 days in which to deem an application complete, and depending on staff resources/work loads, the Planning Division sometimes needs the entire 30 days for this purpose; (2) issues may arise during project review and during Planning Commission review, such that a public hearing either does not get set within 40 days, or is continued to a later

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		<p>PC Concern: Require explanation of why 40-day time limit was deleted (see above).</p>		<p>date; (3) a project applicant may submit revised plans, necessitating a new review, which requires additional time; (4) State law does not require the 40-day turn-around; (5) this section of the Milpitas code was adopted in 1955, prior to State Permit Streamlining Act.</p> <p>In researching this question, staff realized that the Use Permit process currently includes a requirement that a public hearing commence within 40 days of receipt of a Use Permit application. As with variance applications, this time frame does not acknowledge the 30-day application completeness time frame allowed by the State or the possibility of extended review time line regarding revised design submittal, issues, etc. State law contains no such requirement for hearing date commencement.</p> <p>Staff Changes: Staff recommends a text amendment to Section 57 (Conditional Use Permit) to delete the 40-day hearing commencement. Staff also recommends fully referencing the public hearing notification process in Section 64 (currently, the reference is not complete).</p>
47-48	19	<p>Correct the typographical error in the TOD District parking reduction provisions to indicate the 20% parking reduction is for the "MXD-TOD" in the northern Midtown area not the "R4-TOD", which does not exist. In addition, since properties in the TOD area can be rezoned in the future, references to specific areas, north and</p>	<p>43.05-1 43.05-2 43.06-2</p>	<p>Amend the TOD parking provisions to state the 20% parking reduction is for TOD developments within ¼ mile of the north BART station. Delete "North Midtown" and "South Midtown" area references.</p> <p>Staff Changes:</p>

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		south, need to be removed. PC Concern: Require clarification regarding what is meant by "North Midtown" reference in the TOD area.		Removed North Midtown reference and add that the parking reduction provision applies to TOD developments within a one-quarter (1/4) mile radius of the Northern BART station.
49-59	20	Amend the Permit Streamlining Section of ZO to provide level of approvals for MXD since it allows mixed use buildings and streamlining section makes distinctions between non-residential versus residential buildings. Clarify approval authority for unscreened roof-top equipment. Re-evaluate commercial and industrial building additions size for Planning Commission review. Clarify Planning Commission Subcommittee role in approving roof equipment. Delete references to Historical Commercial District and Council Res. 6077, since these no longer exist. Change size requirements relating to building additions. PC Concerns: There are cases where the PC should review additions as small as 5,000 SF.	42.10	Revise text to address the new MXD and R4 districts. Clarify Planning Commission Subcommittee role in approving roof equipment. Delete references to Historical Commercial District and Council Res. 6077, since these no longer exist. Staff Changes: Change commercial/industrial building addition size threshold for Planning Commission Subcommittee approval, as follows: change threshold from 10,000 square foot to 5,000 square foot addition, or 10 % of existing building size, whichever is less (and making such additions cumulative from the code implementation date). Revise "building additions" section to be consistent with recently adopted zoning code regarding non-conforming buildings, and also to provide an exception regarding building addition size threshold for second units, since such projects must be kept at a ministerial approval level per State law.
4, 60	21	Zoning Ordinance does not provide a definition for public use and the current definition of quasi-public use conflicts with the Midtown Plan Appendix and is not clear if private or public	2.67 (b) 2.67 (c) 22.04-6	Add a definition for public use that is consistent with the definition in the Midtown Specific Plan, which states are uses provided by public agencies for the general public. In addition, amend the existing definition of quasi public use

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		organization		to be also be consistent with the Midtown Specific Plan and clarify they are uses provided by private organizations for the general public. Staff Changes: To clarify that movie theaters are not considered quasi-public uses, amended definition to read “community theaters”. In addition, to be consistent with changes to public and quasi-public use definition, delete old definition of quasi-public use in TC district and reference new definitions.
61	22	It is not clear whether compact stalls are allowed for commercial districts and uses.	53.14-3	Add text that prohibits compact stalls for commercial districts and uses, with an exception for MXD.
62	23	Clarify that a joint use agreement is only required in situations that involve a condominium or when parking is shared between parcels.	53.07(e)(3)	Modify zoning text to only require a joint use agreement when involving two or more parcels or in a condominium setting.
63-65	24	Second family units are currently allowed in the R1 single-family zoning district on corner lots with minimum lot sizes of 6,000 SF as a conditional use. In order to be consistent with a recent state assembly bill (AB 1866), second units must be administratively approvable. PC Concerns: Determine if State definition of AB 1866	2.69-1 to -3 4.03-6 to 4.03-6.11 4.04-4	Delete second family unit section from conditional uses and add to accessory uses section of the R1 zoning district. Clarify development standards, and revise to include parking requirements and require a visually integrated design with the main dwelling. Remove locational criteria (corner lot, 6,000 sq. ft. minimum lot size) because such criteria are not consistent with State law. Change building increase limit from 10% to 30% to be consistent with State law. Add a definition for second family unit

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		would allow preclusion of a separate a second entrance; and add “at time of application” to provision of 1 of 2 units being occupied by the owner.		Staff Changes: Renumbered existing Definitions text; and added “at time of application” text. Cannot disallow a separate entrance for second unit, since State code definition of second unit is that it “provides complete independent living facilities,” and a separate entrance is consistent with this definition. Allow a traffic study to be submitted if there is reason to believe a traffic flow problem could be created.
66-67	25	<p>The intent of the Floor Area Ratio (FAR) calculation is to determine density in non-residential zoning districts, which assists in controlling the mass of a development. However, it does not exclude underground or partial-underground parking areas that do not contribute to the visual prominence of a building.</p> <p>PC Concerns: Reference other cities to gauge whether above grade parking structures should be excluded from FAR as recommended in the Midtown Plan appendix definition.</p>	2.38-2 2.41-1.2	<p>Amend the definition of FAR to exclude areas used exclusively for parking that are below grade by at least 4 feet from the FAR calculation. (see below)</p> <p>Staff Changes: Research from other cities revealed that San Jose excludes parking in basements only from FAR, where Fremont excludes all parking areas (below or above grade) from FAR. Staff concluded to retain current Midtown Plan area definition of FAR (which excludes all structure parking areas) since Midtown area is anticipated to be denser and have taller buildings. However, in all other areas of the city only basement (completely below grade) parking should be excluded from FAR because it would not contribute to the bulk of a building or site.</p>
68-72	26	To be consistent with the policies adopted in the Child Care Master Plan in April 2002, large family child care homes need to be changed	4.03-6 4.04-6 6.03-6	Delete large family day care homes from conditional uses sections of R1, R2, R3, R4 and MXD and add as permitted or accessory uses in those districts. In addition, include a

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		from conditional uses to accessory or permitted uses in all residential districts, including MXD.	6.04-6 7.03-6 7.04-4 8.03-5 8.04-3 38.02-6 38.03-1 (1) 54.16	reference to the child care standards in Subsection 54.16 (General Provisions). Revise child care development standards in Subsection 54.16 to reflect new State law governing review of child care facilities.
68-71, 73-75, 77-78	27	Amend the definition of family child care homes (large and small) to reflect the current state regulations and update the language to reflect new terminology to be consistent with state licensing language. PC Concern: Need to clarify that child care facility (formerly day care home) is still a facility in a home.	2.26-1 to -3 2.26-4 to -7 2.29-1 2.38-1 4.03-5 4.04-6 6.03-5 6.04-6 7.03-5 7.04-4 8.03-4 8.04-3 17.04-9 18.03-4.1 19.03-9.1 21.03-5.1 22.04-3.1 38.02-5 38.03-1(1) 40.04-2.1 53.23-6 to -8 54.16	Revise definition of family day care home to list large family child care homes as caring for 9 to 14 children (used to be 7 to 12) and small family child care homes as caring for up to 8 children (used to be 6). In addition, amend the terminology to be consistent with State code, replacing the word "day" with "child," such as "child care center," instead of "day care center," and family child care home," instead of "family day care home," etc. Renumber existing Definitions text. Staff Changes: Amended definition of child care facility to reflect that care may be provided in care taker's home.

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79-86	28	Condominium Conversion section is currently in the R3 zoning text (XI-10-7.14) and referenced in R4. Now that we have R4 and MXD districts, and since housing is also allowed in TC district, we may want to move the Condo Conversion text to General Provisions section or make as a separate chapter.	7.14 8.04-8 54.19	Move language in 7.14 (which is R3) and add to General Provisions in 54.19 so that it will apply to all zoning districts where rental housing is allowed. Change reference in 8.04-8 (which is R4) to reflect the new location of the condominium conversion text in Section 54.
24-27, 87	29	Clarify that compact stalls are allowed in R-3, R-4 and MXD Districts under certain conditions. PC Concern: Percentage of compact stalls proposed may be too high. Check with neighboring cities.	38.06-3(b)(1) 38.06-3(b)(2) 38.06-3(d) 7.09-1 7.09-1.5(a) 7.09-1.5(b) 7.09-5 7.09-6 8.06-2.5 8.06-2.5(a) 8.06-2.5(b) 8.06-5 8.06-6	Allow up to 50 percent of total required parking to be compact stalls in these districts (in MXD, allowed for residential uses only), however, not allowed for non-residential, guest parking and in certain cases for parking garages with more than 8 stalls. Staff Changes: Staff took an average of San Jose (40%), Fremont (30%) and San Francisco (50%) and proposed 40% of total compact stalls allowed. In addition, provide residential parking dimensions in R-3, R-4 and MXD zoning districts since City's parking standards (Section 53) only apply to non-residential.
88	30	There are no provisions for FAR (Floor Area Ratio) for C2-TOD and M2-TOD zoned properties that exist within Midtown.	43.05-3 45.05-4	Add FAR's for C2-TOD of 100% and M2-TOD of 40% to the TOD Overlay District development standards.
89-90	31	Update table of contents to reflect above new topics being added to General Provisions	Table of Contents	See Table of Contents

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91-92	32	There are no provisions to allow use permit revocation procedure.	63.06	Amend existing text to allow for situations of Use Permit revocation where the use has been abandoned. Proposed language calls for Planning Commission involvement only. (Currently, the code addresses only those instances where there has been a code violation or public nuisance involved, and the revocation process involves both Planning Commission and City Council review.)
2, 93	33	Current ordinance does not provide a definition or allowances for a conference center as a primary use.	2.26-1.3 35.04-5.1 35.04-5.2	Provide a definition for conference centers and allow as a conditional use in the MP zoning district.
N/A	34	Add regulations for inclusionary affordable housing including in-lieu housing fee for residential developments citywide.	54.21 (See separate agenda item and staff report)	Set forth regulations for inclusionary (20%) affordable housing regulations, as well as an in-lieu fee for those developments where the affordable units cannot be provided or the developer requests to pay a fee rather than provide the affordable housing and allowing other options to the 20% requirement.
6, 94-95	35	Tutoring Centers are currently not addressed in the TC district.	2.77-.05 19.02-35.1 22.02-35	Add tutoring centers as a permitted use in the C2 and TC districts. Provide a definition.

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2.07-1 Amateur Radio Facility

A wireless communication facility operated by an FCC licensed amateur radio operator within the Amateur Radio Service (USC Title 47, Part 97).

2.07-2 Amateur Radio Operator

A person holding written authorization to be the control operator of an Amateur Radio facility. This authorization may be in the form of a license or permit issued by the Federal Communications Commission or a foreign national or multi-national license or permit recognized by treaty as valid in the United States.

2.07-3 Antenna

Any system of towers, poles, panels, rods, wires, drums, reflecting discs or similar devices used for the transmission or reception of electromagnetic waves. See also "Satellite dish or satellite antenna".

2.08 Apartment House

Same as "Dwelling Multiple-Family". (Ord. 38 (part), 3/15/55)

2.09 Apartment, Efficiency

A dwelling unit in a multi-family building consisting of not more than one (1) habitable room, together with kitchen or kitchenette and sanitary facilities. (Ord. 38.22, 2/1/62)

2.09-1 Arcade

Any business establishment or premises containing seven (7) or more mechanical or electronic game type machines. (Ord. 38.551, 9/7/82)

2.09-2 Associated Zoning District

Existing zoning district(s) which are applied by the City to land zoned Mixed Use (MX) through adoption of a Land Use Master Plan and adoption of a Development Plan. Associated Zoning Districts set forth the uses, both those allowed by right and those conditionally allowed, and the development standards applicable to all property zoned MX. Specifically, only the following zoning districts may be associated: Single Family (R1), One and Two Family Residence (R2), Multiple Family (R3), Neighborhood Commercial (C1), General Commercial (C2), Administrative and Professional Office (CO), Highway Services (HS), Light Industrial (M1), Heavy Industrial (M2), and Industrial Park (MP) Zoning Districts. (Ord. 38.717, 5/20/97)

2.10 Deleted. (Ord, 38.603, 7/15/86)

2.10-1 Auto

Any motor vehicle requiring a license pursuant to the California Vehicle Code.

2.11 Automobile Service Station

Any premises used for supplying gasoline and oil at retail, direct to the customer, including minor accessories and services for automobiles, but not including automobile repairs. (Ord, 38 (part), 3/15/55)

2.12 Automobile and Trailer Sales Area

Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundary of such cemetery. (Ord. 38 (part), 3/15/55)

2.26-1 Commercial Fueling Facility

"Commercial fueling facility" is a fueling facility designed for commercial customers which dispenses gasoline, diesel, or similar vehicle fuels, and which is not open to the general public, has no cash sales and provides no personal services on-site, provided that said facility is located not closer than five hundred (500) feet from any residentially zoned district or any area designated on the General Plan as being "residential" or any mobile home park. (Ord. 38.654 (A) (part), 3/20/90)

2.26-1.2 Commercial Wireless Communication Facility

A wireless communication facility operated by a for-profit business or for-profit purposes. See by contrast, "Noncommercial wireless communication facility".

(1)

2.26-1.3 Conference Center

A facility used for holding conventions, seminars, workshops or similar activities, including dining facilities and lounges for use by participants, as well as compatible accessory facilities such as offices and business centers.

(33)

2.26-1.4 Class A Office Space

A high quality, modern building with large floor plates and amenities that typically attracts rents in the top twenty-five percent (25%) bracket. (Ord. 38.759 (part), 4/2/02)

2.26-2 Condominium

"Condominium" is an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial building on such real property, such as an apartment, office, or store. A condominium may include in addition a separate interest in other portions of such real property. Such estate may, with respect to the duration of its enjoyment, be either of the following:

1. An estate of inheritance or perpetual estate.
2. An estate of life.
3. An estate for years, such as leasehold or sub-leasehold. (Ord 38 (part), 3/15/55)

2.26-3 Condominium Conversion

"Conversion" is a change in the type of ownership of a parcel or parcels of land, together with the existing attached structures, to that defined for a condominium project or a community apartment project regardless of the present or prior use of such land and structures and whether substantial improvements have been made or are to be made to such structures. (XI-10-2.26-1 and Ord. 38.485, 7/3/79; Ord. 38 (part), 3/15/55)

2.26-4 Commercial Athletic Facility

A building or site equipped for physical training or athletic type games and sports, such as but not limited to, health spas, tennis, gymnasiums, handball courts, racquetball courts; also including ancillary uses when incidental to the primary use, such as but not limited to, steam baths, weight training, aerobic classes, massage, saunas, and the retailing of athletic supplies to be used in the facility. (Ord. 38.694 (1) (part), 10/4/94)

2.26-5 Commercial Service

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Any awning, portable, demountable or permanent cabana, ramada, storage cabinet, carport, fence, windbreak or porch established for the use of the occupant of the mobile home. (Ord. 38.227 (part), 6/20/72)

2.58-5.1 Mobile Recycling Unit

An automobile, truck, trailer or van, licensed by the Department of Motor Vehicles or bins, boxes or containers transported by a truck, van or trailer, and used for the collection or recyclable materials. (Ord 38.629 (part), 10/27/87)

2.58-5.2 Noncommercial Wireless Communication Facility

A wireless communication facility operated by a government agency, a nonprofit organization, a for-profit business for non-profit purposes or a private citizen for personal use. It includes all amateur radio facilities. See by contrast, "Commercial wireless communication facility".

①

2.58-6 Natural Land Slope

The average slope of the lot in percent, determined by observation on simple slopes, or more precisely by the formula:

$$S = \frac{100 \text{ } l \text{ } L}{A}$$

Where "l" is the contour interval in feet;

"L" is the combined length of the contour lines in scale feet; and

"A" is the net area of the lot in square feet.

(Ord. 38.355, 9/16/75; Ord. 38 (part), 3/15/55)

2.59 Non-Conforming Building

A building or structure or portion thereof lawfully existing at the time this Chapter became effective, which was designed, erected or structurally altered, for a use that does not conform to the use regulations of the district in which it is located. A non-conforming building shall also mean any building or structure built in compliance with all city land use and zoning laws in existence at the time and which does not comply with current development standards, including but not limited to height, setbacks, floor area ratio, maximum lot coverage, maximum size of residence, front yard paving and impervious surface coverage. (Ord. 38, 3/15/55)

2.60 Non-Conforming Use

A use which lawfully occupied a building or land at the time this Chapter became effective and which does not conform with the use regulations of the district in which it is located. (Ord. 38 (part), 3/15/55)

2.61 Open-Air Business

Drive-in business where persons are served in automobiles. (Ord. 38 (part), 3/15/55)

2.62 Occupation

A principal business, profession or vocation in which one is regularly and habitually engaged for the purpose of compensation for a livelihood. (Ord. 38.39, 8/15/63; Ord. 38 (part), 3/15/55)

2.62-1 Parcel

A "parcel" shall mean a legal lot of record.

**2.63 Parking Area, Private**

An open area, other than a street or alley, used for the parking of the automobiles of occupants of a building. (Ord. 38 (part), 3/15/55)

2.64 Parking Area, Public

An open area, other than a private parking area, street or alley, used for the parking of automobiles and available for public or quasi-public use. (Ord. 38 (part), 3/15/55)

2.65 Parking Space, Automobile

Space within a building or a private or public parking area for the parking of one (1) automobile. (Ord. 38 (part), 3/15/55)

2.65-1 Patio Cover

A patio cover is a one-story structure, not exceeding twelve (12) feet in height and open on one (1) or more sides (provided, however, that the open sides may be closed with insect screening or plastic screening that is permeable material and not in any manner that would obstruct the free passage of light or air) used for recreational, outdoor living purposes only and not as carports, storage rooms or habitable rooms. (Ord. 38.342, 7/2/74)

2.66 Person

A natural person, his or her heirs, executors, administrators or assigns, and also including a firm, partnership or corporation, its or their successors or assigns, or the agent of any of the aforesaid. (Ord. 38 (part), 3/15/55)

2.66-1 Private Recreational Areas

Any usable open space or recreational facility available for use by all of the site's residents. . (Ord. 38.759 (part), 4/2/02)

2.67 Place

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An open, unoccupied space, other than a street or alley, permanently reserved as the principal means of access to abutting property. (Ord. 38 (part), 3/15/55)

2.67 (a) Public Right-of-Way

As defined in Chapter V-500-1.3 of the Milpitas Municipal Code, "public right-of-way" shall mean the full width of the right-of-way of any street, as defined in the California Vehicle code used by the general public, whether or not such street has been accepted as and declared to be part of the City system of streets, including streets forming a part of the State Highway System. "Public right-of-way" also includes easements where the City is the grantee of the easement and property owned by the City of Milpitas or the Milpitas Redevelopment Agency and any public park, trail, or right-of-way within the City of Milpitas.

①

2.67 (b) Public Use

A use intended to serve the whole city and/or region and operated by a public institution or entity. Such uses have the purpose primarily of serving the general public and include public schools, recreational facilities, government facilities, government housing, government clinics, and the like.

21

2.67-1(c) Quasi-Public Use

A use intended to serve the whole city and/or region and are operated by a private, private non-profit, educational, religious, recreational, charitable, or medical institution, and having the purpose primarily of serving the general public. Such uses include churches, religious facilities, private schools, community theaters, community, youth and senior citizen recreational facilities and club organizations, private hospitals, places of assembly government facilities, and the like.

21

2.67-1-1 Recyclable Material

Recyclable material is reusable material including but not limited to metals, glass, plastic and paper, which are intended for reuse, remanufacture, or reconstitution for the purpose of using the altered form. Recyclable material does not include refuse or hazardous materials. Recyclable material may include used motor oil collected and transported in accordance with the California Health and Safety Code. (Ord. 38.629 (A) (part), 10/27/87)

2.67-2 Recyclable Processing Facility

A recyclable processing facility is a building or space used for the collection and processing of recyclable materials. Processing means the preparation of material for shipment by such means as bailing, briquetting, compacting, flattening, grinding, crushing, sorting, shredding, cleaning, and remanufacturing. (Ord. 38.629 (A) (part), 10/27/87)

2.67-2.1 Research and Development (R&D) Uses

Research and Development facilities include one or more buildings which feature a combination of offices, manufacturing, assembly, warehousing, distribution, laboratories and clean rooms, and ancillary uses such as cafeterias and employee fitness facilities. (Ord. 38.708 (1), 8/6/96)

2.67-3 Reverse Vending Machine(s)

(a) An automated mechanical device which accepts at least one or more types of empty beverage containers including, but not limited to aluminum cans, glass and plastic containers, and issues a cash refund or a redeemable credit slip. A reverse vending machine sorts, and processes containers mechanically provided that the entire process is enclosed within the machine. In order to accept and temporarily store all three container types in a proportion commensurate with their

relative redemption rates, and to meet the requirements of certification as a recycling facility, multiple grouping of reverse vending machines may be necessary.

(b) A bulk reverse vending machine is a reserve vending machine that is larger than fifty (50) square feet, is designed to accept more than one container at a time; and will pay by weight instead of by container. (Ord. 38.629 (A) (part), 10/27/87)

2.68 Rooming House

Same as "Lodging House". (Ord. 38 (part), 3/15/55)

2.68-1 Satellite Dish Antenna or Satellite Antenna

Any device incorporating a reflective surface that is solid, open mesh or bar configured to form a shallow dish, cone, horn or cornucopia used to transmit and/or receive electromagnetic signals. This definition includes antennas that are sometimes called "SES", "TVRO", "TVBS", and "DBS".

①

2.69 School: Elementary, Middle or High

An institution which offers instruction in the several branches of learning and study required to be taught in the public schools by the Education Code of the State of California. (Ord. 38.710 (part), 8/6/96; Ord. 38 (part, 3/15/55), 3/15/55, Ord. 38.710, 8/6/96)

2.69-.5 Setback

See "Yard".

③

2.69-1 Slope

Same as "Natural Land Slope". (Ord. 38.355, 9/16/75)

2.69.2 Slope Stability

Slope stability is the relative ability of slopes to retain their frictional resistance to downslope movement. (Ord. 38.355, 9/16/75)

2.70 Stable, Private

A detached accessory building for the keeping of horses owned by the occupants of the premises and not kept for remuneration, hire or sale. (Ord. 38, 3/15/55)

2.71 Stable, Public

A stable other than a private stable. (Ord. 38, 3/15/55)

2.72 Story

That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between such floor and ceiling next above it. (Ord. 38, 3/15/55)

2.73 Story, Half

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~~2.75-1 Telecommunications Antenna Facility~~

~~A "Telecommunications Antenna Facility" is an antenna and associated mechanical equipment that is used for a telecommunications network. Examples include, but are not limited to:~~

- ~~(a) mounted to an existing building or structure; or~~
- ~~(b) an antenna attached to an existing monopole or other utility structure; or~~

2.76 Townhouses

Dwelling units that are attached at their sides in groups of three or more and are sited on individual lots with vehicular access from driveways. Private rear yards or patios and common open space may be part of a townhouse development. (Ord. 38.759 (part), 4/2/02)

2.77 Trailer, Automobile

A vehicle without motive power designed to be drawn by a motor vehicle and to be used for human habitation or for carrying persons and property, including a trailer coach or house trailer. (Ord. 38 (part), 3/15/55)

2.77-05 Tutoring Centers

Facilities offering academic instruction to individuals or groups in a classroom setting.

2.77-1 Usable Open Space

Any open space, the smallest dimension of which is at least six (6) feet and which is not used as storage or for movement of motor vehicles. Yards abutting a public street, which are not adequately screened for privacy, in the opinion of the Planning Commission, shall not qualify as usable open space. (Ord. 38.759 (part), 4/2/02)

2.78 Use

The purpose for which land or a building is arranged, designed or intended, or for which either land or building is or may be occupied or maintained. (Ord. 38 (part), 3/15/55)

2.78-1 Vibration Damage

Vibration damage is partial or complete destruction to structures due to ground vibration caused by the transmission of earthquake vibrations from the ground into the structure. (Ord. 38.355, 9/16/75; Ord. 38 (part), 3/15/55)

2.78-2 Vehicle Oriented Window Service Facility

Vehicle Oriented Window Service Facility shall mean any component or part of a building or structure which attracts or invites persons in motor vehicles to drive their vehicles upon the premises, and which is used to conduct business or used for the purpose of selling merchandise from the inside of said building to the occupants of motor vehicles. (Ord. 38.396, 9/20/77; Ord. 38 (part), 3/15/55)

2.78-3 Video Sales and Rental Store

Video Sales and Rental store shall mean any place of business which includes the sale or rental of pre-recorded video tapes, laser discs, compact discs, or any other medium which projects pictures on a screen. (Ord. 38.697 (1) (part); 12/20/94)

2.78-4 Wireless Communication Facility

The equipment and associated structures needed to transmit and/or receive electromagnetic signals. A wireless communication facility typically includes antennas, supporting structures (including, but not limited to, monopoles, utility structures, buildings and accessory structures), enclosures and/or cabinets housing associated equipment, cable, access roads and other accessory development.

①

2.79 Yard

An open space, other than a court, on a lot, unoccupied and unobstructed, except by eaves, from the ground upward, except as otherwise provided in this Chapter. Where applicable, yards shall be measured perpendicularly from the property line to the face of the nearest exterior wall of any main building, except as otherwise provided in this Chapter (See Section 55.04.11). Setback shall be synonymous with yard. (Ord. 38 (part), 3/15/55)

③

2.80 Yard, Front

A yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel thereto on the lot. (Ord. 38 (part), 3/15/55)

2.81 Yard, Rear

A yard extending across the full width of the lot between the most rear main building and the rear lot line; the depth of the required rear yard shall be measured horizontally from the nearest point of the rear lot line toward the nearest part exterior wall of a the main building. (Ord. 38 (part), 3/15/55)

③

2.82 Yard, Side

A yard between the main building and the side lot line extending from the front yard, or front lot line where no front yard is required, to the rear yard; the width of the required side yard shall be measured horizontally from the nearest point of the side lot line toward the nearest part exterior wall of the main building. (Ord. 38 (part), 3/15/55)

③

UPDATE LOG:

(Ord 38.19, 2/16/61: Sec 2.01 added)
 (Ord 38.22, 2/1/62: Sec 2.03, 2.09 added)
 (Ord 38.39, 8/15/63: Sec 2.62 added)
 (Ord 38.227, 6/20/72: Sec 2.58.1, 2.58.2, 2.58.3, 2.58.4, 2.58.5 added)
 (Ord 38.339, 2/19/74: Sec 2.38.1 added)
 (Ord 38.342, 7/2/74: Sec 2.65.1 added)
 (Ord 38.396, 9/20/77: Sec 2.78.2 added)
 (Ord 38.355, 9/16/75: Sec 2.37.1, 2.37.2, 2.41.1, 2.57.1, 2.58.6, 2.69.1, 2.69.2, 2.78.1 added)
 (Ord 38.485, 7/3/79: Sec 2.26.1, 2.26.2 added)
 (Ord 38.551, 9/7/82: Sec 2.09.1, 2.39.1 added)
 (Ord 38.603, 7/15/86: Sec 2.07, 2.10 deleted, Sec 2.43 Added)
 (Ord 38.629, 10/27/87: Sec 2.58.5.1, 2.67.1, 2.67.2, 2.67.3 added)
 (Ord 38.646, 8/1/89: Sec 2.25.1, 2.41.2 added)
 (Ord 38.654, 3/20/90: Sec 2.26.1 added)
 (Ord 38.667, 1/21/92: Sec 2.14.1 added)

Section 55 Exceptions

55.01 Use

See non-conforming uses (Section 56). (Ord 38, 3/15/55)

55.02 Height

55.02-1 Through Lot 150 Feet or Less in Depth

On a through lot one hundred fifty (150) feet or less in depth, the height of a building may be measured from the adjoining curb level on either side. (Ord 38, 3/15/55)

55.02-2 Through Lot More than 150 Feet in Depth

On a through more than one hundred fifty (150) feet in depth, the height regulation and basis of height measurement for the street permitting the greater height shall apply to a depth of not more than one hundred fifty (150) feet from that street. (Ord 38, 3/15/55)

55.02-3 Structures Permitted Above Height Limit

Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building. Parapet walls, skylights, towers, process towers and columns, including appurtenant working structures, steeples, flagpoles, chimneys, smokestacks, wireless masts — provided such masts comply with Section 54.09-16 and Section 57.02-15.1, water tanks, gas tanks, silos, or similar structures may be erected above the height limits herein prescribed, but no penthouse or roof structure, or any space above the height limit shall be allowed for the purpose of providing additional floor space. (Ord 38, 3/15/55)

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55.03 Area

55.03-1 Yard Regulations Modified

Where the yard regulations cannot reasonably be complied with, such regulations may be modified or determined by the Commission as provided for in Section 58 (Variances). (Ord 38, 3/15/55)

In the case of an irregular shaped lot or a lot with more than 4 sides where there is some questions as to what are the front, side, and rear property lines in order to determine setbacks and required yards, there shall be at a minimum, one front property line and one rear property line. The rear property line shall be the lot line directly parallel to the front property line and of a width of at least thirty (30) feet in length. If no such lot line exists, the Director of Planning shall make the final determination as to the rear property line of such lot.

55.03-2 Front Yard - Between Projecting Buildings

54.09-11 In-ground pools, in-ground spas, and associated decking no more than eighteen (18) inches above ground, and other equipment, such as air-conditioning units, shall not come closer than 3 feet to any side or rear property line. These accessory structures are excluded from the 30% maximum allowed rear yard coverage. (4)

54.09-12 Fences, walls, lattice work screen and guard railings are exempt from the accessory building and structure provisions.

54.09-13 Depressed ramps and handicap ramps, may be located in any front, side or rear yard but in no case some closer than 3 feet to any adjoining property line. Openwork type railing and guard railing for safety protection around depressed ramps not more than three and one-half (3-1/2) feet in height above ground level adjacent thereto may be installed or constructed on any ramp. (Ord 38, 3/15/55)

54.09-14 Open, unenclosed fire escapes may extend or project into any front, side or rear yard not more than four (4) feet. (Ord 38, 3/15/55)

54.09-15 Utility or mechanical equipment structures, such as pool equipment units and air conditioning units shall not come closer than 3 feet to any side or rear property line. (4)

54.09-16 Wireless Communication Facilities exempt from obtaining a conditional use permit as per Section 57.02-15.1 (1)

a) No vertical structure associated with an Antenna (hereinafter "Tower or Mast") shall exceed the maximum height of a structure permitted in the zoning district in which the structure is located by more than twenty-five (25) feet (hereinafter "Maximum Height") except as provided in this Section. The Maximum Height shall be measured to the highest point of the Tower or Mast or Antenna(s) mounted thereon.

b) All Towers or Masts must be attached to the main structure or to a foundation. In any event, the design of the attachment must meet or exceed the Tower or Mast manufacturer's recommended design for such structural attachment or foundation. Guy wires may only be used as a means of support for Towers or Masts only if such Tower or Mast does not exceed 20 feet in height. Wire antennas suspended from Towers or Masts shall not be considered guy wires. Such manufacturer's recommended design shall be submitted with the building permit application and shall form the basis for permitting and subsequent inspection.

c) The sum of equivalent flat plate wind load(s) in square feet of all equipment needed for the communication facility to function and that are mounted on the Tower or Mast shall not exceed 100% of the Tower or Mast manufacturer's maximum wind loading specification for a minimum 70 mph wind if located on the valley floor and 80 mph wind if located within the hillside area.

d) No part of any Antenna mounted on a Tower or Mast may extend closer than 3 feet to a property line whether fixed or movable, or forward of the front of the building. However, in no case shall any such antenna encroach into a utility easement within which overhead power lines are located. If such antenna serves a multi-family unit that is within a multi-family building where the unit does not adjoin a side or rear yard of the building, such antenna attached to the unit or attached to a structure attached to the unit may extend forward of the front of the building by no more than 3 feet. However, in no case shall any such encroachment forward of the front of the building extend into a public right-of-way or private accessway.

e) All Towers and Masts attached to a foundation must be located within the side or rear yard and no closer than 10 feet from a property line. However, in no case shall a Tower and/or Mast encroach into a utility easement.

f) Receive-only radio and television antennas, citizens band facilities and data communications facilities and satellite dishes one meter or less in diameter in residential zones, or two meters or less in diameter in commercial and industrial zones shall not be installed between a public right-of-way and a structure. Any of the aforementioned

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wireless communication facilities that are preempted by federal law that are proposed to be located in the area between a public right-of-way and a structure, shall be allowed without a use permit if such facility is attached to said structure and if such location provides the only unobstructed view required for the facility to function.

g). There shall be no more than two antenna support structures that exceed 20 feet in height per parcel.

h). A Tower or Mast may exceed the Maximum Height referenced in subsection a) above only by an extendable Tower or Mast provided that (a) the collapsed height of the Tower or Mast and Antenna(s) does not exceed the Maximum Height and (b) the extendable Tower or Mast shall be permitted to exceed the Maximum Height only during communications operations and shall be lowered to the Maximum Height upon termination of each operating session.

i). Masts, Towers and Antennas shall not be painted and shall be limited to grey, black, white, brown, tan, silver, gold, pale blue, dark green or any other color compatible with surrounding structures or vegetation.

j). If an Antenna, Tower or Mast is no longer used for its intended purpose, it shall be removed.

k). All operations of Tower or Mast mounted Antenna(s) must meet applicable FAA and FCC rules and regulations and any emissions must meet applicable FCC and ANSI radiation safety guidelines.

54.10 Geologic Hazard Zones

54.10-1 Any zoning application proposed for new real estate development or structure for human occupancy shall be subject to approval in accordance with the policies and criteria established by the State Mining and Geology Board and findings of the State Geologist in conformance with the requirements of the Public Resources Code, Section 2621, et. seq. (Ord 38.347, 10/15/74)

54.11 Fences

54.11-1 Measurement of Fence Height

The height of a fence shall be measured from the finished grade to the top of fence at any point (including barbed wire tops). Where the finished grade is a different elevation on either side of the fence, the height may be measured from the side having the highest elevation.

54.11-2 Regulations for the Valley Floor

54.11-3 Height Limitations

Fences shall not exceed six (6) feet in height at the rear and side yards, and forty-two (42) inches in height at the front yard.

54.11-4 Exceptions

- a) In any zoning district combined with the "S" Combining District, fences at the rear and side yards may be eight (8) feet maximum height when approved by the Planning Commission.
- b) In all zoning districts fences at the rear and side yard adjacent to recreational areas, athletic fields or courts may be twelve (12) feet maximum height provided that the portion of the fence higher than six (6) feet is of approved openwork.

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57.01.2 Deleted (Ord 38.662, 1/8/91)

57.01.3 Deleted (Ord 38.662, 1/8/91)

57.02 Additional uses permitted

The Commission may, after a public hearing, permit the following uses in districts from which they are prohibited by this Chapter where such uses are deemed essential or desirable to the public convenience or welfare and are in harmony with the various elements or objectives of the Comprehensive Master Plan. However, any of the following uses which are marked with an asterisk (*) shall not be allowed in the designated Hillside Area. (Ord 38.633,)

- *1 Airport or aircraft landing field. (Ord 38.633,)
- 1.1 Helicopter pads for medical evacuation purposes. (Ord 38.633,)
- *2 Cemetery (Ord 38.633,)
- *3 Columbarium, crematory or mausoleum. (Ord 38.633,)
- *4 Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto. (Ord 38.633,)
- 5 Educational Institution. (Refer to definition section)
- 6 Government Enterprise (Federal, State and Local).
- 7 Hospital or Sanitarium.
- 8 Library or Museum, public.
- 9 Nursery or Greenhouse.
- 10 Park, Playground, or Recreational or Community Center.
- 11 Philanthropic Institution.
- *11.1 Correctional Facility. (38.633,)
- 12 Private Club. (Ord 38.633,)
- *12.1 Fraternity or Sorority House. (Ord 38.633,)
- 13 Public Utility and Public Service Use or Structure.
- 14 Radio or Television transmitter.
- 15 Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes. (Ord. 38.629, 10/27/87)
- 15.1 ~~Telecommunication Antenna Facility~~
Wireless Communication Facility.
It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking

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and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the community. The standards that follow are the minimum necessary to obtain the community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.

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Any facilities exempt from local regulation as per FCC regulations and the following non-commercial wireless communication facilities shall be exempt from obtaining a conditional use permit and shall be permitted provided that the following standards are met:

A. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:

1. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and
2. All required building permits are obtained.

B. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:

1. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and
2. All required building permits shall be obtained.

C. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.

- 16 Without limitation to the generality of the provisions of Section 57 et. seq., conditional use may also be granted to accomplish any of the purposes set forth in Subsection 57.02. (Ord 38.92, 12/6/66)
- 17 Permit in the "R" Districts, public parking areas or storage garages adjacent to any existing or proposed use in the multiple dwelling, commercial or industrial districts.
- 18 Permit the modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.
- 19 Permit the addition or enlargement of a non-conforming building or structure in any district other than R1, R2 and R1-H, provided such addition or enlargement complies with all development standards, including but not limited to height, setbacks, maximum lot coverage, and floor area ratio regulations of the district in which it is located. In addition, the cumulative floor area included in all such additions or enlargements since the adoption of this Ord. No. 38.760 shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.

55.04-11 Building additions into the required rear yard shall be allowed for all legal, conforming single-family and two-family dwellings in all Valley Floor Residential districts, when such dwelling has been constructed in accordance with law and a minimum period of one (1) year has elapsed since the final inspection as provided for in Title II of the Milpitas Municipal Code.

- (a) Such building additions may be allowed into the required rear yard so that the remaining rear yard set back (measured perpendicular to the rear lot line at any point) is not less than the exterior height of the rear wall of said building addition and shall not encroach into a public utility easement.
- (b) The exterior height of the rear wall at the highest any point shall be measured vertically from the ground to top of the wall.
- (c) All measurements in regards to yards for building additions shall be measured from the exterior face of wall.
- (d) The cumulative total of all said building additions and any accessory buildings or structures noted in Section 54.09 shall not cover an area exceeding thirty percent (30%) of the required rear yard area specified by the regulations or PUD for the District in which this single-family or two-family dwelling is located.
- (e) Applications for building permit pursuant to this section shall provide the Planning Division with sufficient information to determine the remaining rear yard set back and coverage of the required rear yard area as specified in (a) through (c) above. Building additions proposed for all legal, conforming single-family and two-family dwellings in the Valley Floor Residential districts require review and approval by the Planning Division or Planning Commission Subcommittee, pursuant to Section 42.10 of this Chapter.
- (f) This section is intended to apply to bona fide building additions not contemplated at the time of original construction, where the owner finds for personal or economic reasons (in a community of growing families and under economic conditions where the purchases of larger homes imposes a heavy financial burden) the need to expand his existing dwelling and would not otherwise be allowed to do so within the required set backs of the District or Planned Unit Development. The waiting period of one (1) year from final inspection is intended to insure that the addition is erected in good faith and in accordance with the intent of this section. (Ord. 38.716, 9/15/98; Ord. 38.699, 5/16/95; Ord. 38.667 (part), 1/21/92; Ord. 38.373, 5/4/76; Ord. 38.342 7/2/74; Ord. 38.90 9/1/66; Ord. 38 (part) 3/15/55)

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UPDATE LOG

(Ord. 38.716, 9/15/98 Sec. 55.04-11 Amended)

Updated by VL 2/7/03

54.09 Accessory Buildings and Structures

All accessory buildings and structures, as well as building additions as described in Section 55.04-11, in the rear yard are limited cumulatively to a total area not exceeding thirty percent (30%) of the area of the required rear yard, except where noted below. Projection of eaves of accessory buildings and structures shall not be closer than 3 feet to any side or rear lot line.

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54.09-1 An accessory building may be erected detached from the principal building, or erected as an integral part of the principal building, or it may be connected therewith by a breezeway or similar structure.

54.09-2 An accessory building attached to the main building shall be made structurally a part and have a common wall with the main building and shall comply in all respects with the requirements of this Chapter applicable to the main building.

Unless so attached, an accessory building in an "R" District shall be located on the rear one-half (1/2) of the lot and at least six (6) feet from any dwelling building existing or under construction on the same lot and at least fourteen (14) feet from a residential structure existing or under construction on any adjacent lot. Any accessory building shall not be located within three (3) feet of any rear lot line or side line of the rear half of an adjacent lot or within seven (7) feet of the side line of the front half (1/2) of any adjacent lot; and, in the case of a corner lot, shall not project beyond the front line required or existing on the adjacent lot. (Ord 38.667, 1/21/92)

54.09-3 Recreation shelters and storage shelters shall be permitted as accessory buildings provided that these uses are not equipped for use as living quarters. (Ord 38.342, 7/2/74)

54.09-4 Guest house accessory buildings shall not be closer than six (6) feet from the nearest point of the main building. There shall be not more than one (1) guest house on any one (1) building site. (Ord 38.19, 1/17/61)

54.09-5 Patio covers deleted by Ord. 38.342, 72/74

54.09-6 A porte-cochere may be permitted over a driveway in a side yard provided such structure is not more than fifteen (15) feet in height, twenty-four (24) feet in length, not closer than three (3) feet from the side lot line, and is entirely open on at least three (3) sides, except for the necessary supporting columns.

54.09-7 Open, unenclosed stairways, or balconies, not covered by a roof or canopy, may extend or project into a required rear yard not more than four (4) feet, and such balconies may extend into a required front yard not more than thirty (30) inches. Openwork type railing not more than three and one-half (3-1/2) feet in height may be installed or constructed on any open, unenclosed stairways, or balconies, not covered by a roof or canopy.

54.09-8 Open, unenclosed porches, and decks, not covered by a roof or canopy, which do not extend above the finished floor level of the first floor of the building, may extend or project into any rear or side yard, but in no event shall the structure come closer than three (3) feet to any adjoining property line. Openwork type railing not more than three and one-half (3-1/2) feet in height may be installed or constructed on any porch or deck.

54.09-9 Platforms, landing places, concrete slabs, walkways and paved areas not covered by a roof or canopy and up to eighteen (18) inches above the ground may extend or project into any rear or side yard but in no event shall the projection come closer than three (3) feet to any adjoining property line with the exception of walkways four (4) feet in width or less which may extend to the property line. These projections are excluded from the 30% maximum required rear yard coverage.

54.09-10 Patio covers, including but not limited to gazebos and pergolas, shall not exceed 12 feet in height. Built-in barbecue pits and fountains shall not exceed 6 feet in height. None of these structures shall come closer than three (3) feet to any side or rear property line. Patio covers are as defined in Section 2.65-1.

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Additionally, if the applicant desires review by the Planning Commission, staff shall agendaize the project for the next available Planning Commission meeting. Any decision by the Planning Division staff or Planning Commission Subcommittee is subject to appeal to the Planning Commission and ultimately the City Council, pursuant to the provisions set forth in Chapter 10.

The following criteria shall apply to minor modifications for the following project types in "S" combining districts. Certain minor modifications may be approved in the Hillside district, as specified below and in Section 45.09 of this Chapter.

A) Roof Screens, Roof-Top Equipment	
Planning Staff may approve: <ol style="list-style-type: none"> 1) Roof screen expansions which match colors and materials of existing screen. 2) New roof screens which complement building materials and/or include tex-cote finish or stylized design using materials and color scheme to tie in with the building (no non-decorative plywood screens). Where possible, screening of roof top equipment shall employ a single large screen rather than numerous small screens. No parapet extensions may be approved. 3) Roof-top equipment which exceeds the height of existing roof screens, if line-of-sight drawings demonstrate that the equipment will not be visible from surrounding view points. 4) Roof-top HVAC or other potentially noisy equipment on a building which abuts a Residential or Mobile Home Park combining district or use, if the applicant submits acoustical certification that noise levels will not exceed 60 dB DNL at the shared property line. Such equipment must be visually screened from surrounding view points, including the residential uses. 	
B) Building Color Changes	
Planning Staff may approve: <ol style="list-style-type: none"> 1) Color changes for all buildings outside of the Historical Commercial District, Hillside district and PUD's, so long as the proposed colors are earth tone, muted and/or compatible with the surrounding area and development. 2) Color changes for buildings within a PUD, including Hillside PUD's, so long as building color complies with any listed development standards or special conditions of that PUD. 	Planning Commission Subcommittee may approve: <ol style="list-style-type: none"> 1) Color changes for Hillside residences, including homes within a PUD which does not specify color choices, so long as the proposed colors are earth tone, muted and compatible with the surrounding development. Applicant shall submit letter of support from applicable homeowners association. 2) Color changes for buildings within the Historical Commercial District, so long as the proposed colors comply with City Council Resolution No. 6077. However, no color changes may be approved for designated historical or cultural resource structures.
C) Re-Roofs	
Planning Staff may approve: <ol style="list-style-type: none"> 1) Re-roofs for flat roofs, behind parapets, which are not visible from surrounding view points. 	Planning Commission Subcommittee may approve: <ol style="list-style-type: none"> 1) Change in roof material for R1-H lots east and west of the Crestline regardless of lot size. However,

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<p>2) Re-roofs which use the same material as previously approved.</p> <p>3) Change in roof material for <u>homes</u> buildings within a PUD, including Hillside PUD's, so long as the proposed roof material complies with or mimics any listed development standards of that PUD, <u>or tri-laminate asphalt composition is proposed</u>. <u>Metal roof material may be approved so long as it mimics the profile of any listed roof material in the development standards of that PUD, such as wood shake or tile.</u></p> <p>4) Change in roof material for all Residential Valley Floor "S" combining districts <u>to all types of materials, except wood shake, non tri-laminate asphalt composition and metal roof material that is reflective, corrugated or standing seam. may not be approved.</u></p>	<p><u>non tri-laminate asphalt composition, wood shake, and metal roof material that is reflective, corrugated, or standing seam may not be approved.</u></p> <p>2) Change in roof material for buildings in Commercial and, Industrial and Mixed Use districts. However, <u>asphalt composition of any kind, wood shake, and metal roof material that is reflective, corrugated, or standing seam may not be approved.</u></p> <p>3) <u>Change in roof material for all Residential Valley Floor "S" combining districts to a material that is not</u> However, <u>metal roof material that is reflective, corrugated or standing seam, may not be approved.</u></p>
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D) Minor Exterior Building Changes, Including But Not Limited to, Doors, Entryways, Patios and Patio Covers, Walkways, ATM's, Awnings, Loading Areas

Planning Staff May Approve:	Planning Commission Subcommittee May Approve:
<p>1) In Commercial and Industrial districts, minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building, with no loss of required parking, no net reduction in the number of on-site trees and no loss of protected trees as defined in Section X-2-7.01:</p> <ul style="list-style-type: none"> a. Windows and person doors which match existing or which complement the building facade. b. New or expanded patios, patio covers, awnings and canopies at the rear or sides of a building, except on the street side of a corner lot. c. Landscape deletion (i.e. shrubs and groundcovers) to accommodate new walkways which are required for building exiting purposes or handicap accessibility. d. ATM's proposed on an exterior wall of an existing bank in Commercial and Industrial districts. e. Minor changes to architectural elements which do not change the overall design of a building. f. Replacement of windows with roll-up doors (and vice versa) when located toward the interior side or rear of a site. g. Metal canopies over equipment storage yards at the rear of commercial or industrial sites, provided they are not visible from public streets or abutting a Residential or Mobile Home Park combining district or use. h. New loading areas and revisions to existing loading areas, when located toward the rear or side of a site, except for the street side of corner lots, or except if the project area abuts a Residential or Mobile Home Park combining district or use. <p>2) In all Residential Valley Floor "S" combining districts, minor exterior building changes as described below, provided that the project</p>	<p>1) In Commercial and Industrial districts, minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building, with no loss of required parking, no net reduction in the number of on-site trees and no loss of protected trees as defined in Section X-2-7.01:</p> <ul style="list-style-type: none"> a. New main entryways at the building front or street side which feature architectural projections (i.e. porticos, entryway roof covers, trellises, etc.). b. New or expanded patios, canopies/patio covers, trellises and awnings proposed at the front or street side of a building. c. New fountains or other decorative amenities. d. New loading areas and revisions to existing loading areas proposed at the front half of the building or lot, except where the project area abuts a Residential or Mobile Home Park combining district or use. e. ATM's proposed on a non-bank building and other pedestrian-oriented in-wall automated service machines. <p>2) In the Hillside district, minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building.</p> <ul style="list-style-type: none"> a. Minor changes to architectural elements which do not change the overall design of a building. b. Windows, window awnings and person doors which match existing or which complement the building facade.

TC Town Center District

Permitted Uses

22.02-26.1 Residential developments of between twenty-one (21) and forty (40) dwelling units per gross acre. (WA)

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Conditional Uses

~~22.04-7 Residential developments of up to forty (40) units per acre provided that the Commission makes a finding that the location of such a use is appropriate and in conformance with the purpose and intent of the Town Center District specified in Section 22.01 above.~~

22.04-7 Residential developments of between one (1) and twenty (20) dwelling units per gross acre, provided that the Commission makes a finding that the location of such a use is appropriate and in conformance with the purpose and intent of the Town center District specified in Section 22.01 above..

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Amend Section 3 as follows:

3.02 Combining Regulations

In addition to the foregoing districts certain combining regulations are established as set forth in this Chapter, said combining regulations being as follows, to wit:

	<u>Full Name</u>	<u>Short Name</u>
"DB"	Density Bonus Combining District	"DB" District
"S"	Special Zoning Area	"S" District
"MHP"	Mobile Home Park Combining District	"MHP" District
"TOD"	Transit Oriented Development Combining District	"TOD" District
"OO"	Gateway Office Overlay Combining District	"OO" District
"H"	Hillside Combining District	"H" District

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Move Density Bonus section to the General Provisions section and revise as follows:

Section 41.54.20 "DB" Density Bonus for Affordable Housing Developments

41.54.20-1 Purpose

The "DB" ~~District~~ Density Bonus ~~regulations~~ Combining District ~~is are~~ intended to encourage the provision of affordable housing in the community by granting density bonuses and other incentives to developers of residential projects that construct or otherwise provide for housing units that will be available for purchase or rent by senior citizens and lower income persons and households. The "DB" ~~District~~ Density Bonus provisions are applicable in all zoning districts that allow residential development. This Ordinance is adopted in conformance with Chapter 4.3 of Title 7 of the Government Code, Section 65915.

41.54.20-2 Density Bonus Authorization

The City Council, after recommendation by the Planning Commission, may authorize an increase in allowable dwelling unit density for those residential projects that assist in meeting the lower income or senior housing needs of the community. When the Planning Commission and Council make a finding that a developer has complied with the requirements of ~~XI-10-41.03 and XI-10-41.09~~ Subsections 54.20-3 and 54.20-9, the City Council, after recommendation by the Planning Commission, may award a density increase, with the approval of the project. ~~The Planning Commission shall hold at least one public hearing, prior to making its recommendations to the City Council.~~ The applicant shall submit site and architectural plans for all structures on the project (per Section 42.04 of this Chapter) ~~area~~ for review and approval in conjunction with the Planning Commission and City Council consideration of the Density Bonus application. The Planning Commission shall hold at least one public hearing, prior to making its recommendation to the City Council. Upon receipt of the recommendation of the Planning Commission, the City Council shall hold at least one public hearing, prior to any final action on an application. Notice of hearing shall be given in accordance with the provisions of ~~Subsection~~ Section 64 of this Chapter.

41.54.20-3 Density Bonus Conditions

A. When a developer of housing agrees or proposes to construct at least: (1) twenty (20%) percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the California Health and Safety Code; or (2) ten (10%) percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety code; or (3) fifty (50%) percent of the total dwelling units of a housing development for senior citizen housing, as defined in Section 51.2 of the California Civil Code, the City ~~shall either~~ shall:

- (1) ~~Grant~~ Grant a density bonus and at least one concession or incentive, as defined in ~~Subsection 40-41.04~~ Subsection 54.20-4, unless the City makes a written finding that the additional concession or

~~incentive is not required in order to provide for affordable housing costs or for rents for the targeted units to be set as specified in Subsection XI-10-41.0754.20-10; or may~~

(2) ~~Provide~~ Provide other incentives of equivalent financial value based upon the land cost per dwelling unit.

B. If a developer agrees to construct both twenty (20%) percent of the total units for lower income households and ten (10%) percent of the total units for very low income households, the developer is entitled to one density bonus and one additional concession or incentive.

C. Additional bonuses, concessions and/or incentives may be granted by the City Council after recommendation of the Planning Commission or upon finding that the project provides a greater percentage of units for lower income households than those described in Subsection 54.20-3A and B. The regulations in this Section do not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land by the City, or the waiver of fees or dedication requirements.

41.0454.20-4 Definitions

A. For the purposes of ~~Subsections A and B of XI-10-41.0354.20-3A and B,~~ "density bonus" means a density increase of at least twenty-five (25%) percent over the otherwise maximum allowable residential density ~~as provided for in Title XI, Chapter 10, Section 54.07-6(c) of the Milpitas Municipal Code specified for the applicable zoning or overlay district (including Section 54.07-6(c) of this Chapter and Resolution No. 3489, as amended from time to time).~~ The density bonus shall not be included when determining the number of housing units which is equal to ten or twenty (10 or 20%) percent of the total.

B. For the purposes of this ~~Chapter~~ Section, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements which exceed the minimum building standards approved by the State Building Standards Commission as provided in ~~Part 2.5~~ (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in lot size, lot dimensions and building setbacks, and in the ratio of vehicular parking spaces that would otherwise be required.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial or other land uses will reduce the cost of the housing development, and if the commercial, office, industrial or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

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(23) Other regulatory incentives or concessions proposed by the developer or the City which result in identifiable cost reductions.

(3) This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land by the city, county, or city and county, or the waiver of fees or dedication requirements.

C. For purposes of this Chapter ~~Section~~, "Housing Development" means one or more groups of projects for residential units constructed in the planned development of the City.

41.0554.20-5 Determination of Maximum Allowable Densities

~~For the purpose of determining the maximum allowable densities within the Milpitas General Plan and Zoning Ordinance the densities allowed shall be determined in the same manner as are Planned Unit Developments as set forth in Title XI, Chapter 10, Section 54.07-6(c) of the Milpitas Municipal Code and Resolution No. 3489 as amended from time to time.~~

The maximum allowable density per gross acre (prior to applying the density bonus) shall be as specified in the Milpitas Zoning Ordinance for the applicable zoning or overlay district or PUD process, as listed in Sections 8.05-2 (R4 district), 22.04-7 (TC district), 38.05-4 (MXD district), 43.05 (TOD overlay district), and 54.07-6(c) (PUD process for R3 district) of this Chapter, and in City Council Resolution No. 3489 as amended from time to time (R1, R2 and R3 districts).

41.0654.20-6 Application ~~Applicability~~

The density bonus referred to in this Section XI-10-41.03 shall apply to housing developments consisting of five or more dwelling units.

41.0754.20-7 Unit Type and Location

All inclusionary (affordable) units ~~should~~ shall be reasonably dispersed throughout the project, shall contain on average the same number of bedrooms as the non-inclusionary units in the project, and shall be comparable with the non-inclusionary units in terms of appearance, materials and finished quality. The Planning Commission may recommend to the City Council modifying the requirements as to unit size or type, if it is found that such a modification would better serve the affordable housing need of Milpitas.

41.0854.20-8 Agreement

~~Within sixty (60) days of the approval of~~ Prior to final building inspection and occupancy for a project containing inclusionary-affordable units, the applicant shall execute and record at the Santa Clara County Recorder's Office the City's Agreement Imposing Restrictions on Real Property, which Agreement shall explain the inclusionary-affordability requirements. The agreement shall be approved by the Milpitas City Attorney prior to recordation.

41.0954.20-9 Retaining Affordability

A developer shall agree to, and the City shall insure continued affordability of, all lower or very low income density bonus units for thirty (30) years or a longer period of time, if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. If the City does not grant at least one (1) additional concession or incentive, in addition to a density bonus as specified in XI-10-41.03(4) Subsection 54.20-3, the developer shall

(7)

agree to, and the City shall ensure continued affordability for a minimum of ten (10) years of all lower or very low income housing units receiving a density bonus or reductions.

41.1054.20-10 Affordable Rents

Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code shall be affordable at a rent that does not exceed thirty (30%) of sixty (60%) percent of the Santa Clara County median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty (30%) of fifty (50%) percent of County median income.

~~Section 41 was amended by repealing the "B" Combining District and replacing it with the "DB" Combining District, Ordinance 38.663, August 20, 1991.~~

Revise in Definitions section, as follows:

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2.36 Dwelling, Group

One (1) or more dwellings, other than a tourist court, arranged around two (2) or three (3) sides of a court, which opens onto a street, or a place approved by the commission, including single-family, two-family or multiple-family dwellings and court apartments. Group dwelling include homeless shelters and transitional housing. (Ord 38, 3/15/55) [See Section 7.04-2]

- (c) Where a public easement prevents a building from being located in at its required minimum or maximum setbacks, the building shall be located as close to the back of said easement as possible.
- (d) All buildings must face onto the street they front upon.
- (e) All required front setback areas shall be landscaped or paved to allow for outdoor seating, display of goods, or street furniture.
- (f) Balconies, bay windows, porches, stoops and awnings may project into the minimum setback areas provided at least sixty percent (60%) of the required setback area is landscaping.
- (g) Trellises, canopies and fabric awnings may project up to five (5) feet into minimum front and street side setback areas and public right of ways, provided they are not less than eight (8) feet above the sidewalk.
- (h) A building's first floor may be recessed from either the maximum front and street side building setback line or the specified build-to line for the purposes of an arcade, or a small gathering/dining or special entry area. The arcade shall have a minimum height of (8) feet, a minimum width of eight (8) feet. Other recessed areas may have maximum depth of ten (10) feet, and may not exceed forty percent (40%) of the building's street facing elevation. An entry door area up to nine (9) feet wide may be recessed up to four (4) feet from the back of the sidewalk.

38.05-6 Interior Side and Rear Yard Setbacks.

- (a) Interior Side Yard. None required in the Ground Level Commercial Area. In all other areas interior side yards shall be a minimum of ten (10) feet.
- (b) Rear Yard. Minimum ten (10) feet.
- (c) Setback areas shall be landscaped but may also be occupied by residential accessory buildings or drive aisles.
- (d) To mitigate the effects of adjacent service commercial or light industrial uses, increased setbacks and other measures, such as a solid six-foot fence or masonry wall, shall be considered on a case by case basis by the Planning Commission during the site and architectural review process, taking into consideration the nature of adjacent uses.

38.06 Off-Street Parking

38.06-1 All Uses.

- (a) No parking spaces are allowed within the front or street side setback areas.
- (b) *On-street parking along the building's street frontage can be counted toward a development's overall parking requirements.*
- (c) There shall be provided off-street parking for automobiles in terms of design layout and sufficient quantity in accordance with the requirements of Section 53. All such parking spaces shall be improved as provided for in Subsection 54.03

38.06-2 Non-Residential Uses. There shall be at least the following:

- (a) Retail: one (1) automobile stall per two hundred fifty (250) square feet of gross floor area.
- (b) Office:
 - (1) If building is one thousand (1,000) square feet or smaller: one (1) automobile stall per two hundred (200) square feet of gross floor area.
 - (2) If building is larger than one thousand (1,000) square feet: three and three tenths (3.3) automobile stalls per one thousand (1,000) square feet of gross floor area.
- (c) For all other uses refer to Section 53, Off-Site Parking Regulations.

38.06-3 Residential Uses.

- (a) Multiple family dwelling units, mixed use developments and live-work units there shall be at least the following:
 - (1) Studio: one (1) covered automobile stall per unit.
 - (2) One (1) bedroom: one and one-half (1½) covered automobile stalls per unit.
 - (3) Two (2) or more bedrooms: two (2) covered automobile stalls per unit.
 - (4) Guest parking: fifteen percent (15%) of automobile stalls required in (1) through (3) above. May be covered or uncovered.
 - (5) Bicycle parking: five percent (5%) automobile stalls required in (1) through (4) above.
- (b) Parking space dimensions shall be as follows:
 - (1) Standard parking spaces shall be a minimum of nine (9) feet wide by eighteen (18) feet long.

- (2) Compact parking spaces shall be a minimum of 7.5 feet wide by 15 feet long. When compact parking spaces are used in garages with more than two spaces, each space shall be marked as compact and shall be assigned and marked for resident use. (29)
- (3) Tandem parking spaces shall be a maximum of two (2) parking spaces deep. (8)
- (c) Tandem parking is not allowed for non-residential uses or guest parking. When tandem parking spaces are used in garages with more than two (2) parking spaces, they shall be assigned and marked for resident. (8)
- (d) A maximum of forty (40) percent of parking may be compact parking spaces. No compact parking spaces are allowed for non-residential uses or guest parking. (29)

38.07 Park and Open Space Requirements for Residential Uses

- 38.07-1 All residential projects within the Midtown Specific Plan area shall provide park land at a ratio of three and one-half (3½) acres per one thousand (1,000) population. Up to one and one-half (1½) of each three and one-half (3½) total park acres required (43%) may be satisfied by the provision of private recreational areas. The remaining park land requirement must be satisfied by either dedication of land to the City for public parks and open space, or payment of an in-lieu fee, as set forth in Section 9 (Park Dedication) of the Milpitas Subdivision Ordinance (Title XI, Chapter 1).
- 38.07-1.1 All residential projects outside the Midtown Specific Plan area shall comply with the park land dedication provisions provided in Section 9.06 (Amount of Park Land to be Dedicated) of the Milpitas Subdivision Ordinance.
- 38.07-2 Each residential project shall provide adequate on-site usable open space or recreational facilities to the approval of the Planning Commission through the Site and Architectural Review ("S" Zone) process.

7.07 Landscape and open space requirements

- 7.07-1 A minimum of twenty-five (25) percent of the total lot area (not including paved parking area) shall be landscaped or recreational open space, exclusive of parking and vehicular traffic area and this shall be shown on the site plan in detail for Planning Commission approval.
- 7.07-2 An average of two hundred (200) square feet of "Usable Open Space" shall be provided for each dwelling unit. "Usable Open Space" shall mean any open space, the smallest dimension of which is at least seven (7) feet and which is not used as storage or for movement of motor vehicles; except that yards abutting a public street, which are not adequately screened for privacy, in the opinion of the Planning Commission, shall not qualify as usable open space. Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas. At least thirty (30) percent of required open space shall be contiguous to and provide for private usable open space of the individual dwelling unit. (Ord 38.57 (part), 6/18/64; Ord. 38 (part), 3/15/55)

7.08 On-site Utilities Requirements

Where the allowable dwelling units exceed six (6) for a single parcel or the total area to be subdivided exceeds three (3) acres, all on-site utilities are to be placed underground.

- 7.08-1 Television antennas are to be centralized for structures of four (4) or more units. (Ord. 38.57 (part), 6/18/64; Ord. 38 (part), 3/15/55)

7.09 Automobile parking and loading areas (Ord 38.57, 6/18/64)

- 7.09-1 For Multiple-Family dwellings, there shall be provided at the time of erection of a new dwelling or an addition to an existing dwelling at least two (2) permanent automobile off-street parking spaces for each dwelling unit plus additional guest spaces equal to twenty (20) percent of the total amount required in a Multiple-Family dwelling. All required parking spaces shall be located to the rear of the front setback line. ~~A parking space shall be a minimum of eight feet six inches (8' 6") wide.~~ (Ord 38.648, 11/7/89) 29

7.09-1.5 Parking space dimensions shall be as follows:

- (a) Standard parking spaces shall be a minimum of nine (9) feet wide by eighteen (18) feet long. 29
 - (b) Compact parking spaces shall be a minimum of 7.5 feet wide by 15 feet long. When compact parking spaces are used in garages with more than two spaces each space shall be marked as compact. 29
 - (c) Tandem parking spaces shall be a maximum of two (2) parking spaces deep. 8
- 7.09-2 A minimum of one (1) off-street parking space is required for each efficiency apartment, as defined herein.
- 7.09-3 All Multiple-Family dwelling units that require two (2) permanent off-street parking spaces each, shall have at least one (1) space covered. Efficiency apartments, as defined herein, may provide an uncovered off-street parking space. (Ord. 38.648 (A), 11/7/89)
- 7.09-4 For Multiple-Family dwelling units that require two (2) permanent off-street parking spaces, two (2) parking space deep tandem parking as surface parking or garage parking shall be allowed for each dwelling unit. All tandem parking spaces shall be assigned and marked for residents only 8
- 7.09-5 A maximum of forty (40) percent of parking may be compact parking spaces. No compact parking spaces are allowed for guest parking. 29

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- (a) There shall be a minimum building setback of eight (8) feet and a maximum building setback of fifteen (15) feet from back of sidewalk. The sidewalk shall be based on either the existing sidewalk or an assumed 10-foot wide sidewalk, whichever is wider.
- (b) Where a public easement prevents a building from being located at its required minimum or maximum setback lines, the building shall be located as close to the back of said easement as possible.
- (c) Porches, stairs and balconies may be located in the front and street side setback areas provided they are incorporated into an integrated landscape concept where the majority of the setback areas are reserved for landscaping. Stairs and porches may project up to six (6) feet into the minimum setback.
- (d) Required front and street side setback areas shall be landscaped. (Ord. 38.759(part, 4/2/02)

8.05-4 Interior Side and Rear Yard Setbacks.

- (a) Interior Side Yard. Minimum ten (10) feet
- (b) Rear Yard. Minimum ten (10) feet
- (c) Balconies, bay windows and awnings may project up to six (6) feet into the interior side or rear setback areas.
- (d) Interior side and rear setback areas shall be landscaped but may also be occupied by accessory buildings and drive aisles.

8.06 Off-Street Parking

8.06-1 There shall be at least the following:

- (a) Studio: one (1) covered automobile stall per unit.
- (b) One (1) bedroom: one and one-half (1½) covered automobile stalls per unit.
- (c) Two (2) or more bedrooms: two (2) covered automobile stalls per unit.
- (d) Guest parking: fifteen percent (15%) of automobile stalls required in (a) through (c) above. May be covered or uncovered.
- (e) Bicycle parking: five percent (5%) of automobile stalls required in (a) through (d) above.

8.06-2 Parking is prohibited in the front and street side setback areas.

8.06-2.5 Parking space dimensions shall be as follows:

- (a) Standard parking spaces shall be a minimum of nine (9) feet wide by eighteen (18) feet long.
- (b) Compact parking spaces shall be a minimum of 7.5 feet wide by 15 feet long. When compact parking spaces are used in garages with more than two spaces each space shall be marked as compact.
- (c) Tandem parking spaces shall be a maximum of two (2) parking spaces deep.

8.06-3 For Multiple-Family dwelling units that require two (2) permanent off-street parking spaces, two (2) parking space deep tandem parking as surface or garage parking shall be allowed for each dwelling unit. All tandem parking spaces shall be assigned and marked for residents only.

8.06-4 Carports shall be no more than eight (8) parking stalls wide and shall be separated from one another by a four (4) foot wide (interior dimension) landscape island, planted with a tree. (Ord. 38.759 (part), 4/2/02)

8.06-5 A maximum of forty (40) percent of parking may be compact parking spaces. No compact parking spaces are allowed for guest parking.

8.06-6 There shall be provided off-street parking for automobiles in terms of design layout and sufficient quantity in accordance with the requirements of Section 53. All such parking spaces shall be improved as provided for in Subsection 54.03.

8.07 Park and Open Space Requirements for Residential Uses

8.07-1 All residential projects within the Midtown Specific Plan area shall provide park land at a ratio of three and one-half (3½) acres per one thousand (1,000) population. Up to one and one-half (1½) of each three and one-half (3½) total park acres required (43%) may be satisfied by the provision of private recreational areas. The remaining park land requirement must be satisfied by either dedication of land to the City for public parks and open space, or payment of an in-lieu fee, as set forth in Section 9 (Park Dedication) of the Milpitas Subdivision Ordinance (Title XI, Chapter 1).

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Section 1. Section 63.07 of Chapter 10 of Title XI is added to read as follows:

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XI-10-63.07 Administrative Citations

When he or she determines that one or more violations of this Chapter have occurred, the City Manager and his/her designee may issue administrative citations pursuant to the procedures set forth in sections V-500-8.00 through V-500-8.06. Where the violation is a continuing violation that does not create an immediate danger to public health and safety, the citation shall set forth a reasonable period of time, which shall not be less than 15 days, for the person responsible for the continuing violation to correct or otherwise remedy the violation prior to the imposition of the administrative fine.

The schedule of fines for administrative citations issued for violations of this Chapter is as follows:

1. Not to exceed \$100 for the first violation
2. Not to exceed \$200 for the second violation of the same code provision within twelve (12) months; and
3. Not to exceed \$500 for the third violation of the same code provision within twelve (12) months.

Each person that fails to pay any fine set out in an administrative citation issued pursuant to this section shall be liable for a late payment charge of 10%.

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12. Pet and bird stores.
13. Post offices.
14. Private clubs and lodges.
15. Public buildings and grounds.
16. Public utility and public service pumping stations, power stations, drainage ways and structures, storage tanks and transmission lines found by the City Planning Commission to be necessary for the public health, safety or welfare.
17. Restaurants, or restaurants which include on-premise consumption of alcoholic beverages when found clearly incidental to the primary food service, or restaurants which include internet usage for customers, but excluding dancing or live entertainment.
18. Self-service laundry.
19. Temporary tract advertising signs with the exception that no tract signs shall be permitted within six hundred (600) feet of a Santa Clara County Expressway.
20. Theater, indoor, excluding Adult Theaters or Adult Motion Picture Theaters, as defined in Subsection 54.18.
21. Variety stores.
22. Vehicle oriented window service facility.
- ~~23.~~ Video Sales and Rental Store. (Ord. 38.697; 12/20/94)

18.04 Development Standards

18.04-1 Height

Uses located in the C1 Neighborhood Commercial District shall be limited so as not to allow a building or structure to exceed two and one-half (2-1/2) stories or thirty-five (35) feet in height. Freestanding sign heights are regulated by Ordinance No. 124, Signs enacted as Chapter 30, Title XI of the Milpitas Municipal Code. (Ord 38.185,)

18.04-2 Front Yards

~~Same as required in the R-Districts.~~ Twenty (20) feet.

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18.04-3 Side and Rear Yards

- (a) Deleted (Ord 38.473,)
- (b) Where the rear or side of a commercial lot abuts a Residential District, there shall be a rear yard or side yard of not less than fifteen (15) feet in depth or width, or both.

18.04-3.1 Floor Area Ratio

Subject to XI-10-2.38.2 the Floor Area Ratio is .35 (35%). (Ord. 38.713, 12-3-96)

18.04-4 Standard Conditions

- (a) All uses and operations—except off-street parking and loading, reverse vending machines or mobile recycling units and other uses and activities customarily

- 38.03-3 The following commercial service uses may also be permitted, provided their location is first approved by the Commission as provided for in Section 57, they are not Adult Businesses as defined in Subsection 54.18, and they are not located within one thousand (1,000) feet of the parcel boundary of another commercial service use listed below. This distance shall be measured from the property line of the parcel where such use is located.
- (a) Auto service uses, including but not limited to: gasoline service stations, car washes, tire shops, towing without vehicle storage and auto repair shops of all kinds, radiators, paint, body, glass, brakes, upholstery, and other types if all operations are conducted wholly within a completely enclosed building. Entrances to the service bays shall not be open to the street but shall be designed to face the rear or interior side property line.
 - (b) Cabinet or carpenter shops if conducted in a completely enclosed building.
 - (c) Janitorial services and window cleaning services.
 - (d) Local transportation service facilities (e.g. taxi, parcel service, ambulance, armored car, and van storage) without outdoor storage of vehicles.
 - (e) Pawnshops.
 - (f) Plumbing or sheet metal shops.
 - (g) Sign shops, if conducted wholly within completely enclosed buildings.
- 38.03-4 The provisions of XI-10-38.03-2 and XI-10-38.03-3, relating to the location of quasi public uses and specified commercial service uses, shall not apply to any lawful uses existing or approved prior to May 2, 2002, except that such uses shall not be allowed to expand beyond the legal parcel area they occupied on May 2, 2002, plus any parcel adjacent to the parcel occupied on May 2, 2002.

38.04 Prohibited Uses

- 38.04-1 Disinfecting and extermination business.
- 38.04-2 Ground level residential in the Ground Level Commercial Area as shown on the Midtown Specific Plan Land Use Map, Figure 3.1.
- 38.04-2.1 Massage establishments.
- 38.04-3 Outdoor storage of vehicles unless noted as allowed in connection with sales or rentals in Section 38.03-1 (d) and (e).
- 38.04-4 Self-service storage facilities.
- 38.04-4.1 Single family detached dwellings.
- 38.04-4.2 Two family dwelling units
- 38.04-5 Vehicle oriented window service facilities.

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38.05 Development Standards

- 38.05-1 Height of Structures. Principal building shall not exceed three (3) stories and forty-five (45) feet. Special architectural features, such as towers or corner elements may be up to fifty-five (55) feet.
- 38.05-2 Non-Residential Lot Area. Individual sites shall be of such size that all space requirements provided in this Section are satisfied.
- 38.05-3 Non-Residential Floor Area Ratio. The Floor Area Ratio for non-residential buildings or non-residential uses within mixed use buildings is seventy-five percent (75%, or 0.75).
- 38.05-4 Multi-Family Residential Density. Residential development shall be a minimum of twenty-one (21) dwelling units per gross acre and shall not exceed thirty (30) dwelling units per gross acre. The minimum number of multi-family residential units may be reduced for parcels less than twenty thousand (20,000) square feet.
- (a) The Ground Level Commercial Area (as shown on the Specific Plan Land Use Map, Figure 3.1), shall have a build-to line that is fifteen (15) feet behind the curb. The fifteen (15) feet between the curb and the building build-to-line shall be developed with sidewalk and street trees.
 - (b) All other areas: front and street side setbacks shall be a minimum of eight (8) feet and a maximum of fifteen (15) feet from back of sidewalk. The sidewalk shall be based on either the existing sidewalk or an assumed ten (10) foot wide sidewalk, whichever is wider.

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2.58-1 Medical and Dental Offices

A building or place where (a) member(s) of the medical profession, dentists, chiropractors, osteopaths, acupuncturists, and physicians or occupational therapists provide diagnosis and treatment to the general public without overnight accommodation and shall include such uses as reception areas, offices, consultation rooms, and x-ray and minor operating rooms providing that all such uses have access only from the interior of the building or structure. These types of uses shall not include massage or acupressure establishments unless the requirements of the City's massage ordinance are met.

(15)

2.58-1.1 Medical and Dental Clinics

A building or place where (a) member(s) of the medical profession, dentists, chiropractors, osteopaths, acupuncturists, and physicians or occupational therapists provide diagnosis and treatment to the general public without overnight accommodation and shall include such uses as reception areas, offices, consultation rooms, x-ray and minor operating rooms, and a pharmacy, providing that all such uses have access only from the interior of the building or structure. These types of uses shall not include massage or acupressure establishments unless the requirements of the City's massage ordinance are met.

(15)

2.58-1-2 Medical Laboratory

A building or place for the purposes of scientific work or research related to the medical sciences.

(15)

2.58-1.3 Mobile Home

A transportable structure designed to be used as a dwelling unit when connected to required utilities. (Ord. 38.541, 420/82; Ord 38.227 (part), 6/20/72)

(15)

2.58-2 Mobile Home Lot

A portion of a mobile home park designated or used for the occupancy of one mobile home. (Ord. 38.227 (part), 6/20/72)

2.58-3 Mobile Home Park

Any areas or tract of land where mobile home lots are rented or leased or held out for rent or lease to accommodate mobile homes used for human habitation. (Ord 38.227 (part), 6/20/72)

2.58-3.1 Repealed by Ord. 38.708, 8/6/96**2.58-4 Mobile Home Stand**

The area on which the mobile home is placed when it is stationed on the lot, including the land lying under the mobile home. (Ord. 38.227, 6/20/72)

2.58-4.1 Mixed Use Development

A development that consists of vertical or horizontal combination of residential and commercial uses within a single building or site. (Ord. 38.759 (part), 4/2/02)

2.58-5 Mobile Home Accessory Building or Structure

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18. Hardware stores intended to serve only that neighborhood area in which they are located.
19. Hobby shops.
20. Deleted (Ord 38.511,)
21. Household repair shops.
22. Interior decorating shops.
23. Jewelry stores.
24. Leather goods and luggage stores.
25. Deleted (Ord 38.511,)
26. Locksmiths.
27. Millinery shops.
- 27.1. Medical and Dental Offices
28. Music stores.
29. Deleted (Ord 38.511,)
30. Deleted (Ord 38.511,)
31. Office, business or professional.
32. Optician and optometrist shops.
33. Deleted (Ord 38.511,)
34. Deleted (Ord 38.511,)
35. Photographic supply stores.
36. Photography studios.
37. Picture framing shops.
38. Retail pressing establishments.
39. Realtors and real estate offices.
40. Deleted (Ord 38.511,)
41. Deleted (Ord 38.511,)
42. Shoe repair shops.
43. Shoe stores intended to serve only that neighborhood area in which they are located.
44. Deleted (Ord 38.511,)
45. Sporting goods stores.
46. Stamp and coin stores.
47. Stationery stores.

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- 48. Retail tailor and dressmaking shops.
- 49. Toy stores.
- 50. Travel bureaus.
- 51. Deleted (Ord 38.511,)
- 52. Watch and clock repair shops.

18.02-2 Any other uses which are added to this list by the City Planning Commission, in accord with the procedure prescribed in Section XI-10-54.02. (Ord 38.123, 5/7/68)

18.02-3 Parking lots improved in conformity with the standards prescribed for required off-street parking facilities in Section XI-10-54.03. (Ord 38.123, 5/7/68)

18.02-4 Accessory structures and uses, not including warehouses, on the same site as a permitted use. (Ord 38.123, 5/7/68)

18.03 Uses Permitted Subject to Receiving a Conditional Use Permit

The following uses may also be permitted if their location is first approved by the Commission, as provided for in Section 57:

- 1. Arcades, with mechanical or electronic games or games of skill or science. (Ord 38.551, 9/7/82)
- 2. Automobile service stations with or without service bays. The entrances to the service bays shall not be open to the street but shall be so designed to face the rear or interior side property line. (Ord 38.662,)
- 3. Book and rental libraries.
- 4. Cigar store (tobacco shop).
- 4.1 Small and large family day care home, and day care center (Ord 38.702, 8-15-95)
- 5. Churches and other religious institutions.
- 5.1 Commercial athletic facilities, conducted wholly within a building, such as but not limited to health spas and gyms, tennis, handball or racquetball, etc. (Ord 38.551, 9/7/82)
- 6. Food stores, delicatessens, and supermarkets.
- 7. Household appliance stores.
- 8. Liquor stores. (38.511, 1980)
- 8.1. Medical and Dental Clinics.
- 9. Music and dance studios.
- 10. Newsstands.
- 11. Paint and wallpaper stores.

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- 18 Deleted (Ord. 38.710 08/06/96)
- 19 Janitorial services and window cleaning services.
- 20 Jewelry store. (Ord 38.637, 8/16/88)
- 21 Laundries and dry cleaning.
- 22 Mail box rentals. (Ord 38.637, 8/16/88)
- 23 Newspaper printing, printing, lithographing and publishing.
- 24 Medical or dental clinic and laboratory.
- 25 Music store or music instruction.
- 26 Offices: business, professional, administrative, medical, dental etc. (Ord 38.637, 8/16/88)
- 27 Photo finishing store.
- 28 Rentals: Sickroom supplies, costumes, and party equipment, etc. (Ord 38.637, 8/16/88)
- 29 Repairs, rental and distribution of office or business equipment.
- 30 Retail stores or businesses. (Ord 38.637, 8/16/88)
- 31 ~~Shoe~~ stores and repair. (Ord 38.637, 8/16/88)
- 32 Telephone answering service. (Ord 38.637, 8/16/88)
- 33 Telephone exchange. (Ord 38.637, 8/16/88)
- 34 Deleted (Ord. 38.705, 8/15/95; ~~Ord 38.637, 8/16/88~~)
- 35 Thrift store. (Ord 38.637, 8/16/88)
- 36 Upholstering shop, if conducted wholly within a completely enclosed building.
- 37 Deleted (Ord 38.697, 12/20/94)
- 38 Wholesale or discount merchandise broker, excluding exterior storage.
- 39 Other uses similar to the above as provided for in Subsection XI-10-54.02.

(15)

XI-10-19.03 Uses Permitted Subject to Securing a Conditional Use Permit

The following uses may also be permitted in their location if first approved by the Commission, as provided for in Section XI-10-57:

- 19.03.1 Arcades, with mechanical or electronic games or games of skill or science, excluding Adult Arcades as defined in Subsection 54.18. (Ord 38.551, 9/7/82; Ord 38.711, 8/20/96)

CITY OF MILPITAS

22.02-11	Dry Cleaners Store. (WA)
22.02-12	Florist Store. (WA)
22.02-13	Furniture Store. (WA)
22.02-14	Hardware Store. (WA)
22.02-15	Hobby Shop. (WA)
22.02-16	Household Repair Shop. (WA)
22.02-17	Jewelry Store. (WA)
22.02-18	Leather Goods or Luggage Store. (WA)
22.02-19	Locksmith Shop. (WA)
<u>22.02-19.1</u>	<u>Medical and Dental Office (EA, WA)</u>
22.02-20	Millinery Shop. (WA)
22.02-21	Music Store. (WA)
22.02-22	Offices: Business or Professional. (EA, WA)
22.02-23	Optician or Optometrist Store or Office. (EA, WA)
22.02-24	Photography Supply Store. (WA)
22.02-25	Picture Framing Shop. (WA)
22.02-26	Real Estates Office. (EA, WA)
22.02-27	Tailor or Dressmaking Store. (WA)
22.02-28	Shoe Store. (WA)
22.02-29	Shoe Repair Shop. (WA)
22.02-30	Sporting Goods Store. (WA)
22.02-31	Stamp or Coin Store. (WA)
22.02-32	Stationery Store. (WA)
22.02-33	Toy Store. (WA)
22.02-34	Travel Agency or Office. (EA, WA)

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22.03 Accessory Uses

The following are the accessory uses permitted in all sub-areas of the "TC" District:

22.03-1 Signs appurtenant to any use in this District are regulated by Ordinance No. 124, Sign Ordinance, enacted as Chapter 30. Title XI of the Milpitas Municipal Code.

22.03-2 Deleted (Ord. 38.693, 9/20/94)

Section 30 M1 Light Industrial District**XI-10-30.01 Purpose and Intent**

The M1 Light Industrial District is reserved for the construction, use and occupancy of buildings and facilities for office, research, limited and light manufacturing, and other uses compatible with the district.

XI-10-30.02 Principal Permitted Uses

The following principal uses are permitted in the M1 District:

- 30.02-1 Adult Businesses, subject to the provisions of the Adult Business Ordinance, Title III, Chapter 4 and to the provisions of Subsection 54.18. (Ord 38.711, 8/20/96)
- 30.02-1.1 Administrative, professional or research offices and uses when found necessary to serve and appropriate to the Industrial area.
- 30.02-2 Bottling plants.
- 30.02-3 Distribution plants.
- 30.02-3.1 Medical and dental office, clinics and laboratories when found necessary to serve and appropriate to the industrial area.
- 30.02-4 Plants and facilities for the research and development, assembly, packaging, processing, repairing or treatment of equipment, materials, merchandise or products.
- 30.02-5 Plumbing, sheet metal or woodworking shops.
- 30.02-6 Pottery or tile manufacturing or other similar ceramic products.
- 30.02-7 Public Utility buildings.
- 30.02-8 Veterinary clinic, hospital or kennel.
- 30.02-9 Wholesale business, storage building and warehouse.
- 30.02-10 Other uses similar to the above as provided for in Subsection XI-10-54.02.

(15)

XI-10-30.03 Conditional Uses

- 30.03-1 Automobile service stations with or without service bays. Entrances to the service bays shall not be open to the street but shall be so designed to face the rear or interior side property line. (Ord 38.662, 1/8/91)
- 30.03-2 Auto repair shops of all types.
- 30.03-2.1 Billiard center. (Ord 38.688, 3/15/94)
- 30.03-3 Caretakers residence.
- 30.03-3.1 Churches.
- 30.03-4 Commercial athletic facilities and health spas; such as but not limited to tennis, handball, racquetball, etc.

Section 35 MP Industrial Park District**XI-10-35.01 Purpose and Intent**

The MP district is intended to accommodate, in a park like setting, a limited group of research, professional, packaging and distribution facilities and uses which may have unusual requirements for space, light, and air, and the operation of which are clean and quiet and which meet the standards set herein. (Ord. 38 (part), 3/15/55)

XI-10-35.02 Principal Permitted Uses

The following principal uses are permitted in MP Districts:

- 35.02-1 Assembling, packaging, or distribution from previously prepared materials, such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, electric or electronic instruments and devices such as television, radios, phonographs and pharmaceutical products.
- 35.02-2 Chemical and physical science offices and laboratories.
- 35.02-3 Distribution and storage facilities.
- 35.02-4 Financial institution and offices
- 35.02-5 Laboratories - experimental, film or testing.
- 35.02-6 Medical, dental or research offices, clinics, and laboratories, ~~and offices.~~
- 35.02-7 Professional offices.
- 35.02-8 Public utility buildings and substations.
- 35.02-9 Any other research, packaging, distribution, or professional use determined by the Planning Commission to be of the same general character as the above permitted uses and not in conflict with the Purpose and Intent section of this District as provided for in subsection XI-10-54.02. (Ord. 38 (part), 3/15/55)

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XI-10-35.03 Accessory Uses

The following uses are permitted in MP Districts:

- 35.03-1 Incidental services, such as restaurants and recreation facilities for employee use only, and when conducted in and entered from within the building group. (Ord. 38 part), 3/15/55)

XI-10-35.04 Conditional Uses

Uses permitted subject to securing a conditional use permit as provided for in Section XI-10-57.00:

- 35.04-1 Automobile dealerships selling new and used automobiles (excluding any boat or camper sales) with said dealership uses only taking place on parcels of three (3)

- Post signs (in English and multi-lingual) inside the premises for all employees identifying procedures for food delivery and garbage disposal.
- All garbage bins shall be stored in the garbage enclosure except for the twelve (12) hours immediately before and after garbage collection.

38.02-3 Medical or dental offices and clinics.

38.02-3.1 Mixed use developments

38.02-4 Multi-Family housing. See Section 38.04 regarding prohibition of ground level residential along portions of South Main Street.

38.02-4.1 Live-work units

38.02-5 Small family day care home.

38.02-6 Planned Unit Developments.

38.02-7 Any other uses which are added to this list by the City Planning Commission, in accordance with the procedure prescribed in Section XI-10-54.02.

38.03 Uses Permitted Subject to Receiving a Conditional Use Permit

38.03-1 The following uses may also be permitted, provided their location and operation is first approved by the Planning Commission, as provided for in Section 57, and they are not Adult Businesses as defined in Subsection 54.18:

- (a) Retail stores, offices or commercial service establishments greater than ten thousand (10,000) square feet in gross floor area.
- (b) Retail stores, offices or commercial service establishments open past 10:00 p.m.
- (c) Arcades, with mechanical or electronic games or games of skill or science.
- (d) New and used auto, recreational vehicle, and boat sales, excluding commercial vehicles, trucks, buses, vans, farm and construction equipment, with accessory repairs and services. Said accessory repairs and services shall be conducted wholly within a completely enclosed building. Outdoor display is allowed.
- (e) Bicycle and auto rental agency, excluding commercial vehicles, trucks, buses, vans, boats and RV rentals. Outdoor display is allowed.
- (f) Billiard centers.
- (g) Blueprinting.
- (h) Bowling alleys.
- (i) Catering establishments.
- (j) Cocktail lounges with or without live entertainment.
- (k) Commercial laboratories, including medical and dental laboratories.
- (l) Large family day care homes and day care centers.
- (m) Laundries and dry cleaning establishments.
- (n) Liquor stores.
- (o) Motels and hotels.
- (p) Music or dance instruction.
- (q) Pet hospitals and veterinarians.
- (r) Pet and bird stores.
- (s) Restaurants, or restaurants which include internet usage for customers, that do not meet the performance standards listed in Subsection 38.02-2.
- (t) Restaurants with a bar area, dancing or live entertainment.
- (u) Stores selling used merchandise, such as thrift stores.
- (v) Tanning salons.
- (w) Temporary tract advertising signs with the exception that no tract signs shall be permitted within six hundred (600) feet of a Santa Clara County Expressway.
- (x) Theatres, indoor only.
- (y) Rooming and boarding houses for any number of guests.
- (z) Group dwellings.

- .4 Shopping goods, retail, convenience goods, personal services and repairs, except furniture stores, restaurants, service stations and car washes -- 1 sp/200 Sq. Ft. GFA for 1 st floor plus 1 sp/300 Sq. Ft. for each upper floor.
- .5 Furniture stores and other bulky item retail stores -- 1 sp/350 Sq. Ft. GFA.
- .6 Restaurants (table or counter service) -- For indoor and outdoor seats, 1 sp/3 seats (all seats including those in the waiting area) and an additional ten (10%) percent for employee parking. (Ord 38.675, 10/20/92)
- .7 Restaurants which are of the fast food or take-out type -- 1 sp/2.5 seats for the seating or table/dining area (indoor and outdoor) plus 1 sp/50 Sq. Ft. NFA for the ordering or take-out area, not the seating or table/dining area. (Ord 38.665, 10/29/91)
- .7-1 Window service or Drive-thru -- Queuing for five (5) vehicles which do not interfere with any on-site parking spaces (to be combined with but not limited to categories 53.23-2.6 or 53.23-2.7, when window service is provided). (Ord 38.665, 10/29/91)
- .7-2 Drinking establishments, nightclubs, bars, cocktail lounges, discos or similar uses with or without entertainment -- 1 sp/30 Sq. Ft. GFA. (Ord 38.665, 10/29/91)
- .8 Bowling alleys including incidental accessory uses (eating and drinking, billiards, etc.) -- 6 sp/alley or lane.
- .9 Day care schools -- 1 sp/classroom or 1 sp/500 Sq. Ft. GFA.
- .10 Service stations with lube bays -- 3 sp/lube bay.
- .11 Service stations without lube bays -- 1 sp/200 Sq. Ft. GFA of building area.
- .12 Car washes -- 1 sp/200 Sq. Ft. GFA of building area and reservoir space outside of building equal to 2 times the maximum capacity of facility.
- .13 Mortuary, funeral parlor -- 1 sp/4 seats and 1 sp/employee.
- .14 Financial Institutions (banks, savings and loans, etc.) -- 1 sp/180 Sq. Ft. GFA for each floor. (Ord 38.530, 7/21/81)
- .15 Automobile service, repair garage, etc. -- 3 sp/service bay, excluding using the service bay. In addition to the service bay requirement, any retail, office or storage/warehouse space within the facility shall utilize that criteria found in other subsections of this Section for those functions. (Ord 38.665, 10/29/91)
- .16 Vocational schools, including business, professional, technical and trade schools -- 1 sp/200 Sq. Ft. GFA.

53.23-3 Industrial Uses

- .1 Manufacturing plants, warehouses or storage, heavy industrial, distribution or general manufacturing -- 1 sp/1500 Sq. Ft. GFA. (Ord 38.665, 10/29/91)
- .2 Wholesale uses -- 1 sp/500 Sq. Ft. GFA. (Ord 38.665, 10/29/91)
- .3 Research and Development uses, uses oriented toward the "high tech", medical laboratories, or uses which have a high employee demand -- 1 sp/300 Sq. Ft. GFA. (Ord 38.665, 10/29/91)

- .4 Office space within an industrial building (to be combined with categories 1 and 2 above) -- 1 sp/350 Sq. Ft. GFA. (Ord 38.546, 5/ /82)

53.23-4 Medical Buildings

- .1 Medical and dental offices and clinics -- 1 sp/225 Sq. Ft. GFA for each floor.
.2 Hospitals -- 1 sp/bed or 1 sp/220 Sq. Ft. GFA, whichever is greater.
.3 Convalescent homes -- 1 sp/2 beds or 1 sp/1000 Sq. Ft. GFA, whichever is greater.

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53.23-5 Public Buildings

- .1 Auditoriums and theaters and places of meeting and assembly -- 1 sp/4 seats.
.2 Museums and libraries -- 1 sp/400 Sq. Ft. GFA for each floor.
.3 Public utilities - 1 sp/400 Sq. Ft. GFA for each floor.
.4 Stadiums and arenas -- 1 sp/4 seats.
.5 Religious Institutions -- 1 sp/5 seats in main area of assembly plus parking for classrooms and offices at the rate specified in Section 53.23 (refer to section 53.21(c) for seat calculations).

53.23-6 Child Day Care Uses

- .1 Single family, duplexes and multi-family residences -- shall be the same number of spaces required in residential districts. (Ord 38.702, 8-15-95)
.2 Day care facilities serving more than six children -- 1 sp/1.5 employees. (Ord 38.702, 8-15-95)
.3 Schools other than day care centers -- 1 sp/classroom or 1 sp/500 sq. ft. gross floor area. (Ord 38.702, 8-15-95)

53.23-7 Loading/Unloading Child Day Care Uses

Day care facilities -- 1 sp/6 children up to 5 spaces and thereafter 1 sp/10 children. Driveways, garage aprons and street frontage may be counted if appropriate permits are first received when calculating spaces for day care homes. Tandem spaces are prohibited. (Ord 38.702, 8-15-95)

53.23-8 Exceptions for Child Day Care Requirements

The parking and loading/unloading space requirements for day care facilities included in Section XI-10-53.23-6 may, in the Planning Commission's discretion, be reduced, based on an empirical study (provided by the applicant) which establishes no adverse effects will occur as a result. The required number of loading/unloading spaces may be reduced without a study by one (1) space for each employee permanently assigned to load and unload children from vehicles. (Ord 38.702, 8-15-95)

- 53.23-9 All parking spaces as required above shall be on the same lot with the main building or structure or located not more than three hundred (300) feet from the main building. (Renumbered per Ord 38.702, 8-15-95; Ord 38.384, 10/26/76)

<p>Division with written, signed consent of adjoining residential property owners and applicable homeowners association.</p> <p>c. The addition shall comprise building materials, colors and style which complement the existing structure.</p>	<p>c. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an addition.</p> <p>2) Residential building additions exceeding 200 square feet in size for legal, conforming single-family and two-family dwellings in the Valley Floor Residential "S" combining districts, and for single-family dwellings in Hillside PUD's which are specifically conditioned not to require Planning Commission or City Council review for building additions, provided building height, parking, setback, yard coverage, impervious surface coverage, landscaping, open space and other ordinance requirements are met. The following shall also apply:</p> <p>a. The applicant shall provide the Planning Commission Subcommittee with written, signed consent of adjoining residential property owners and applicable homeowners association.</p> <p>b. The addition shall comprise building materials, colors and style which complement the existing structure.</p>
J). Accessory Buildings	
<p>Planning Staff May Approve:</p> <p>1) Accessory buildings in the Residential Valley Floor "S" combining districts, provided building height, parking, setback, yard coverage and other ordinance requirements are met. The following shall also apply:</p> <p>a. Accessory buildings for conditional uses in Residential R1 and R2 districts and for permitted and conditional uses in R3 districts shall comprise building materials, colors and style which complement the existing main structure.</p> <p>b. The applicant shall provide the Planning Division with written, signed consent of adjoining residential property owners and applicable homeowners association.</p>	<p>Planning Commission Subcommittee May Approve:</p> <p>1) Accessory buildings up to 2,500 square feet in area in Commercial and Industrial districts, provided that the proposed structure is not adjacent to a Residential or Mobile Home Park combining district or use, and provided that building height, parking, setback, yard coverage, Floor Area Ratio, landscaping, open space and other ordinance requirements are met. The following shall also apply:</p> <p>a. Accessory buildings must be located on the rear half of the lot. On corner lots, the accessory building must be set back from the adjacent street as least as far as the main building.</p> <p>b. Accessory buildings must be of permanent construction (no modular buildings or metal buildings) with the exception of small pre-fabricated structures for chemical storage and the like, so long as such structures are adequately screened from public rights-of-way.</p> <p>c. Architecture shall match that of the existing building in terms of material, colors, style, etc.</p> <p>d. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an accessory building.</p>
K) Trash/Recycling Enclosures, Transformers, Above Ground Tanks, Exterior Equipment, Equipment Enclosures and Storage Areas	

[Note to planners: Get Bldg & Fire comments before PC Sub meeting. If project involves hazardous materials, to confirm that proposed enclosure location, configuration and building materials are safe/acceptable]

Planning Staff May Approve:

- 1) Trash/recycling, equipment or storage enclosures up to 200 square feet in size in Commercial and Industrial districts, proposed at the rear of the building or lot and where least visible from public rights-of-way, and which comply with the following:
 - a. Enclosure may not be approved adjacent to a Residential or Mobile Home Park combining district or use.
 - b. On the street side of corner lots, enclosure must be set back at least as far as the main building.
 - c. Colors and materials of the enclosure shall complement the building and shall consist of masonry wall such as split face block or masonry finished to match the building or other solid screening material utilizing colors and materials which complement the building.
 - d. Gates shall be solid metal painted to match the enclosure.
 - e. The enclosure shall screen the dumpsters, trash compactors or equipment.
 - f. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an enclosure.
 - g. When feasible, sides and rear of the enclosure shall be landscaped.
 - h. On-site parking shall meet ordinance requirements, except as provided in Section XI-10-54.15-3 of the Milpitas Municipal Code.
- 2) Chain link, slatted enclosures up to 200 square feet in size for trash/recycling, equipment or storage area purposes in Commercial and Industrial districts, only if such enclosure is an expansion of an existing chain link slatted enclosure, is at the rear of the building or site, is not visible from public rights-of-way, and complies with the following:
 - a. Enclosure may not be approved adjacent to a Residential or Mobile Home Park combining district or use.
 - b. The enclosure shall screen the dumpsters, trash compactors or equipment.
 - c. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an enclosure.
 - d. When feasible, sides and rear of the enclosure shall be landscaped.
 - e. On-site parking shall meet ordinance requirements, except as provided in Section XI-10-54.15-3 of the Milpitas Municipal Code.
- 3) Above ground transformers, tanks and other exterior equipment in Commercial and Industrial districts, which are located at the rear of the building or lot and which comply with the following:
 - a. Equipment shall not be approved adjacent to a

Planning Commission Subcommittee May Approve:

- 1) Trash/recycling, equipment or storage enclosures exceeding 200 square feet in size in Commercial and Industrial districts and enclosures for conditional uses in Residential districts (except Hillside). The following shall apply:
 - a. Colors and materials of the enclosure shall complement the building and shall consist of masonry wall such as split face block or masonry finished to match the building.
 - b. Gates shall be solid metal painted to match the enclosure.
 - c. The enclosure shall screen the dumpsters or trash compactors.
 - d. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an enclosure.
 - e. When feasible, sides and rear of enclosure in all districts shall be landscaped.
 - f. On-site parking shall meet ordinance requirements, except as provided in Section XI-10-54.15-3 of the Milpitas Municipal Code.
 - g. Trash enclosures shall be located as far away as possible from Residential or Mobile Home Park combining districts or uses.
 - h. Enclosures for noise-generating equipment (i.e. generators) may not be approved near Residential or Mobile Home Park combining districts or uses.
- 2) New chain link enclosures for trash/recycling, equipment or storage purposes in Commercial and Industrial districts, provided the enclosure is not visible from public rights-of-way. The following shall apply:
 - a. Enclosure shall consist of vinyl clad chain link with or without matching vinyl slats. Coloring and use of slats shall be to the discretion of the Planning Commission Subcommittee.
 - b. The enclosure shall not remove any trees or required parking.
- 3) Above ground transformers, tanks, and other exterior equipment in Commercial and Industrial districts and for conditional uses in Residential districts (except Hillside). The following shall apply:
 - a. The equipment shall be set back from adjacent streets as least as far as the main building and shall be screened from view by dense shrubbery, masonry wall such as split face block or masonry finished to match the building, or other screening material utilizing colors and materials which complement the building. The Subcommittee shall have the discretion to approve vinyl clad chain link fencing with or without matching vinyl slats, depending on the visibility of the location.
 - b. In all districts, on-site parking shall meet minimum standards.

<p>Residential or Mobile Home Park combining district or use.</p> <p>b. Equipment shall be completely screened from view by dense shrubbery, masonry wall such as split face block or masonry finished to match the building, or other solid screening material utilizing colors and materials which complement the building. Chain link fencing with or without slats may not be approved unless it is an expansion of an existing approved chain link enclosure and it is not visible from public viewing points (see #2 above).</p> <p>c. On the street side of corner lots, the equipment and its screening must be set back at least as far as the main building.</p> <p>d. On-site parking shall meet minimum standards.</p> <p>e. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas municipal Code, may be approved to accommodate a tank, transformer or equipment.</p> <p>f. Installed height of the transformer, tank or equipment shall not exceed ten (10) feet.</p> <p>4) Temporary contractor's office trailers and construction-related storage trailers in undeveloped and developed sections of the City, shall comply with the following:</p> <p>a. The location of such trailers shall not obstruct driveways and traffic access aisles and demonstrate that parking will not be negatively impacted.</p> <p>b. The colors and materials shall complement the main building if one exists.</p> <p>c. Any exterior noise-generating equipment associated with trailers shall not be within 300 feet of a Residential or Mobile Home Park combining district or use.</p> <p>d. The trailers shall be removed upon cessation of permitted construction activity.</p>	<p>c. In Commercial and Industrial districts, no net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate a tank, transformer or other equipment.</p> <p>d. In Commercial and Industrial districts, installed height of the transformer, tank or equipment shall not exceed the building height. Exception: Equipment exceeding building height may be approved if it is proposed at the rear of the building, and the applicant can demonstrate with line-of-sight drawings that the equipment will not be seen from public viewing points.</p> <p>e. If adjacent to a Residential or Mobile Home Park combining district or use, installed height of the equipment shall not exceed six (6) feet.</p> <p>f. In Commercial and Industrial districts, generators may not be approved if located adjacent to a Residential or Mobile Home Park combining district or use.</p> <p>4) <u>Temporary contractor's office trailers and construction-related storage trailers in undeveloped and developed sections of the City, when any of the following apply:</u></p> <p>a. <u>The location of such trailers obstructs or partially obstructs driveways and traffic access aisles.</u></p> <p>b. <u>Parking is negatively impacted.</u></p> <p>c. <u>The colors and materials do not complement the main building if one exists.</u></p> <p>d. <u>Any exterior noise-generating equipment associated with trailers are within 300 feet of a Residential or Mobile Home Park combining district or use.</u></p>
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42.11 Consideration of "S" Zone Pending Zoning Amendment

Upon the close of a public hearing before the Planning Commission on the question of an amendment to this Chapter to change property from one zone to another, and upon favorable report thereon by the Commission, the Commission may consider such matters and regulations as are set forth in Section 42. The Commission may conditionally impose such requirements and regulations upon the subject property as the Commission is authorized to impose by Section 42 and may conditionally grant "S" Zone Approval thereto; said requirements and regulations shall be imposed and said approval shall be granted upon the express condition that said property shall be rezoned in accordance with the specific recommendation of the Planning Commission relating to zoning and shall not take effect unless and until said property is rezoned in accordance with specific recommendations of the Planning Commission and until the ordinance amending this Chapter in accordance with the specific recommendation of the Planning Commission shall take effect. (Ord 38.636, 8/2/88)

UPDATE LOG:

(Ord 38.706, 7/16/96 — Amended Sections 42.02, 42.03, 42.05, 42.08 and 42.10)

(Ord. 38.716, 9/15/98 — Amended Sections 42.04-13, 42.05, 42.10-1, Added 42.10-02)

Revise Section 58 to add City Council as approval authority for variance in hillside. Also, delete stipulation that Planning Commission renders its decision within 40 days of application filing.

Section 58 Variances

58.01 Variances - Authority of Commission and Council

58.01-1 ~~The Planning Commission~~ The City is empowered to grant Variances from the substantive provisions of this Chapter when the strict application of the substantive provisions of this Chapter deprives the property for which the Variance is sought of privileges enjoyed by other property in the vicinity and under identical zoning classification because of special circumstances applicable to the property (including, but not limited to size, shape, topography, location or surroundings).

(a) The Planning Commission shall have approval authority of Variances relating to development within all districts other than the "H" Combining district.

(b) The City Council shall have approval authority, upon recommendation by the Planning Commission, of Variances relating to developments within the "H" Combining district. (Ord 38.92, 12/6/66)

58.01-1(a)2 Definition of Variance

Variance: A permit issued by the City that sanctions deviations from the adopted Zoning Ordinance regulations related to physical standards of development, such as lot size, building setback, and height limits. A Variance may not be granted to allow a use or density not otherwise allowed within the zoning district. (Ord 38.706, 7/16/96)

58.01-2-3 The Planning Commission, or where applicable, the City Council shall be empowered to impose such conditions upon the grant of a Variance as it deems desirable and shall impose such conditions as will assure that the Variance does not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and zone in which said property is located. (Ord 38.92, 12/6/66)

a) The City of Milpitas finds that the granting of a Variance to yard regulations for a lot of record, existing in accordance with law, as provided for in Subsection 54.06-10, does not constitute a grant of special privileges inconsistent with limitations upon other properties in the vicinity and zone in which said property is located. (Ord 38.367, 12/16/75)

58.01-3-4 The following standards shall guide the Planning Commission and City Council in the granting or denial of a Variance and in the imposition of conditions upon the grant of a Variance: (Ord 38.92, 12/6/66)

- a) A Variance is intended to alleviate a hardship imposed by the zoning law and arising from the particular size, shape, topography, location, surrounding, or other circumstance.
- b) The basic test in each case is one of hardship; Variances should not be granted, except in case of hardship.
- c) Denial of the Variance - under the conditions or circumstances presented - would deprive the particular parcel involved of benefits enjoyed by other parcels in the same District.
- d) A Variance should not be used to correct a condition or circumstance generally applicable to the entire District. (Ord 38.367, 12/16/75)
- e) The granting of the Variance must not injure other parcels of property in the same District nor must it be materially detrimental to the public welfare.

58.02 Procedure

58.02-1 ~~Written~~ The applicant shall file a written application for the approval of a Variance request shall be filed in the office of the Planning Director upon forms prescribed for that purpose.

2 ~~A~~ The applicant shall pay a fee shall be paid upon the filing of each application for Variance in accord with a schedule adopted by Council Resolution.

3 The Planning Commission shall hold a public hearing on each application for a Variance upon such notice as is required in Subsections 64.01 and 64.02-2 of this Chapter.

4 ~~The~~ For Variances not involving the "H" Combining district, the Planning Commission shall review the application and make render its decision within forty (40) days from the date of filing of the application.

5 For Variances involving the "H" Combining district, the Planning Commission shall make a recommendation to the City Council. The City Council shall hold a public hearing, with notice as required in Subsections 64.01 and 64.02 of this Chapter, review the application and the Commission's recommendation, and render its decision.

6 The Planning Director shall transmit a copy thereof to the applicant within ten (10) days of the date of decision.

UPDATE LOG:

(Ord 38.706, 7/16/96 Added Sec 58.01-1 (a))

Section 57 Conditional Use Permit

Delete reference to 40-day hearing commencement date:

57.03 Conditional Use Procedure

(Ord 38.92, 12/6/66)

- 1 Written application for the approval of uses referred to in Section 57 shall be filed in the office of the Planning Director upon forms prescribed for that purpose.
- 2 A fee shall be paid upon the filing of each application for a Use permit in accord with a schedule adopted by Council Resolution. (Ord 38.92, 12/6/66)
- 3 The Planning Commission shall hold a public hearing on said application upon such notice as is required in Sections 64.01 and 64.02-2 of this Chapter. ~~The hearing shall be commenced within forty (40) days of the date of the receipt of the application.~~ (Ord 38.92, 12/6/66)
- 4 After the conclusion of the hearing, the Planning Commission may approve the application, approve it subject to such conditions as the Planning Commission may impose, or disapprove the application. (Ord 38.92, 12/6/66)
 - (a) The Planning Commission may impose such conditions as it deems necessary to protect the best interests of the surrounding property of the neighborhood, and as it deems in conformity with the requirements of the General Plan. (Ord 38.92, 12/6/66)
- 5 Approval may be granted by the Planning Commission, or by the City Council upon appeal or within the Hillside District, of a Use Permit application in accordance with this Chapter if all of the following findings are made, based on the evidence in the record: (Ord 38.706, 7/16/96)
 - a) The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare;
 - b) The proposed use is consistent with the Milpitas General Plan; and
 - c) The proposed use is consistent with the Milpitas Zoning Ordinance.

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Section 43 TOD Transit Oriented Development Combining District
(Ord 38.759, 4/2/02)

43.01 Purpose and intent

The purpose of the Transit Oriented Development Combining District ("TOD") is to provide for land uses, land use densities and intensities and development standards that act to enhance and support transit and to locate such uses near rail transit stations. These provisions allow for a mix of goods and services within a convenient walk of the transit stations, encourage the creation of stable, attractive residential, commercial and industrial environments within the District and provide for a desirable transition to the surrounding conventional areas.

43.02 Applicability

The "-TOD" overlay can be combined with any zoning district on lands that are generally within a 2,000 foot walk from a rail transit station. If any of the regulations specified in the "-TOD" combining district differ from any corresponding regulations of any district with which the "-TOD" combining district is combined, then the provisions of the "-TOD" combining district shall govern.

43.03 Additional Conditional Uses

The following uses may be allowed on the ground floor of a mixed use or residential building if a Conditional Use Permit is granted by the Planning Commission:

- 43-03-1 Transit stations and parking.
- 43-03-2 Small-scale commercial uses—excluding Adult Businesses, as defined in Subsection 54.18, and drive-up or drive-in services—to serve residents and local pedestrian traffic and or transit users, such as dry cleaners, video rentals, day care centers and cafes.

43.04 Prohibited Uses

Vehicle oriented window service facilities are not allowed in the "-TOD" Combining District.

43.05 Development Standards

43.05-1 North-Midtown "MXD-TOD" Area.

- (a) Residential developments shall be a minimum of thirty-one (31) dwelling units per gross acre and shall not exceed forty (40) dwelling units per gross acre. The minimum number of residential units may be reduced for parcels in the North Midtown Area that are less than twenty thousand (20,000) square feet
- (b) Residential building height shall not exceed four (4) stories and sixty (60) feet, including special architectural elements such as towers and spires.
- (c) The maximum FAR for non-residential buildings in the "MXD" District is one hundred percent (100%, or 1.0).

43.05-2 South-Midtown "R4-TOD" Areas.

- (a) Residential developments shall be a minimum of forty-one (41) dwelling units per gross acre and shall not exceed sixty (60) dwelling units per gross acre.
- (b) Residential building height shall not exceed five (5) stories and seventy-five (75) feet, including special architectural elements such as towers and spires.
- (c) The maximum FAR for ground floor non-residential uses developed in conjunction with very high density multiple family residential in the "R4-TOD" District is fifty percent (50%, or 0.5).

43.05-3 "C2-TOD" Areas.

- (a) The maximum FAR in the "C2-TOD" District is one hundred percent (100%, or 1.0).

43.05-4 "M2-TOD" Areas.

- (a) The maximum FAR in the "M2-TOD" District is forty percent (40%, or 0.4).

43.06 Off-Street Parking

43.06-1 Total off-street parking required elsewhere in this Chapter may be reduced up to twenty percent (20%).

43.06-2 ~~TOD~~ developments within a one-quarter (1/4) mile radius of the Northern BART station north ~~Midtown "R4TOD"~~ area may only apply the twenty percent (20%) reduction once a decision on the location and viability of the Northern BART station has been made by the City Council.

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43.07 Landscape and Open Space Requirements for Residential Uses

When combined with "-TOD" there shall be no minimum open space requirements; however, adequate open space shall be provided to the approval of the Planning Commission through the Site and Architectural Review ("-S" Zone) process.

43.08 Additional Development Requirements

43.08-1 All developments within the "-TOD" Combining District shall, through the Site and Architectural ("-S" Zone) review process, incorporate measures that would encourage the use of transit, foot and bicycles, including, but not limited to:

- (a) Retail shops and services that residents and employees use on a frequent basis, such as restaurants, cafes, exercise facilities, dry cleaners, day care, video rental and automated teller machines.
- (b) Participation in the Valley Transportation Agency's EcoPass or similar programs that support mass transit.
- (c) Provision of bicycle facilities and showers—new office and employment uses only.

43.08-2 All improvements shall conform to the Midtown Specific Plan, including the Design Guidelines and Standards set forth in Chapter 8.

43.09 Exceptions to Standards

43.09-1 Exceptions to all but the density and floor are ratio standards (Subsections 43.05-1a, 43.05-1c, 43.05-2a and 43.05-2c) may be approved by the Planning Commission through approval of a Conditional Use Permit in accordance with the requirements of Section 57.

43.09-2 In addition to the required findings under Chapter 57, the Planning Commission must be able to make the following two additional findings for such exceptions:

- (a) The exceptions meet the design intent identified within the Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development.
- (b) The exceptions allow for a public benefit not otherwise obtainable through the strict application of the specified standard.

A) Roof Screens, Roof-Top Equipment	
Planning Staff may approve: <ol style="list-style-type: none"> 1) Roof screen expansions which match colors and materials of existing screen. 2) New roof screens which complement building materials and/or include tex-cote finish or stylized design using materials and color scheme to tie in with the building (no non-decorative plywood screens). Where possible, screening of roof top equipment shall employ a single large screen rather than numerous small screens. No parapet extensions may be approved. 3) Roof-top equipment which exceeds the height of existing roof screens, if line-of-sight drawings demonstrate that the equipment will not be visible from surrounding <u>"worst case" view points, including public and private rights-of-way and private properties.</u> 4) Roof-top HVAC or other potentially noisy equipment on a building which abuts a Residential or Mobile Home Park combining district or use, if the applicant submits acoustical certification that noise levels will not exceed 60 dB DNL at the shared property line. Such equipment must be visually screened from surrounding view points, including the residential uses. 	Planning Commission Subcommittee may approve: <ol style="list-style-type: none"> 1) <u>Note: Only the Planning Commission may approve roof-top equipment which exceeds the height of existing roof screens, if line-of-sight drawings demonstrate that the equipment will be visible from surrounding "worst case" view points, including public and private rights-of-way and private properties.</u>
B) Building Color Changes	
Planning Staff may approve: <ol style="list-style-type: none"> 1) Color changes for all buildings outside of the Historical Commercial District, Hillside combining district and PUD's, so long as the proposed colors are earth tone, muted and/or compatible with the surrounding area and development. <u>However, no color</u> 	Planning Commission Subcommittee may approve: <ol style="list-style-type: none"> 1) Color changes for Hillside-residences <u>within the Hillside combining district,</u> including homes within a PUD which does not specify color choices, so long as the proposed colors are earth tone, muted and

<p>changes may be approved for designated historical or cultural resource structures.</p> <p>2) Color changes for buildings within a PUD, including Hillside PUD's, so long as building color complies with any listed development standards or special conditions of that PUD.</p>	<p>compatible with the surrounding development. Applicant shall submit letter of support from applicable homeowners association.</p> <p>2) Color changes for buildings within the Historical Commercial District, so long as the proposed colors comply with City Council Resolution No. 6077. However, noNo color changes may be approved for designated historical or cultural resource structures.</p>
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C) Re-Roofs

<p>Planning Staff may approve:</p> <ol style="list-style-type: none"> 1) Re-roofs for flat roofs, behind parapets, which are not visible from surrounding view points. 2) Re-roofs which use the same material as previously approved. 3) Change in roof material for homes buildings within a PUD, including Hillside PUD's, so long as the proposed roof material complies with any listed development standards of that PUD. Other For Valley Floor PUD's, other material may be approved so long as it mimics the profile of any listed roof material in the development standards of that PUD, such as wood shake or tile. 4) Change in roof material for all Residential Valley Floor "S" combining districts. However, asphalt composition and metal roof material that is reflective, corrugated or standing seam may not be approved. 	<p>Planning Commission Subcommittee may approve:</p> <ol style="list-style-type: none"> 1) Change in roof material for R1-H lots east of the Crestline. However, asphalt composition and metal roof material that is reflective, corrugated, or standing seam may not be approved. 2) Change in roof material for buildings in Commercial, and Industrial and Mixed Use districts. However, asphalt composition and metal roof material that is reflective, corrugated, or standing seam may not be approved. 3) Change in roof material for all Residential and Mixed Use Valley Floor "S" combining districts. However, metal roof material that is reflective, corrugated or standing seam may not be approved.
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D) Minor Exterior Building Changes, Including But Not Limited to, Doors, Entryways, Patios and Patio Covers, Walkways, ATM's, Awnings, Loading Areas

<p>Planning Staff May Approve:</p> <ol style="list-style-type: none"> 1) In Commercial, and Industrial and Mixed Use districts, and for commercial uses in TOD districts, minor exterior building 	<p>Planning Commission Subcommittee May Approve:</p> <ol style="list-style-type: none"> 1) In Commercial, and Industrial and Mixed Use districts, and for commercial uses in
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<p>changes as described below, provided that the project complements the colors, materials and design of the building, with no loss of required parking, no net reduction in the number of on-site trees and no loss of protected trees as defined in Section X-2-7.01:</p> <ol style="list-style-type: none">Windows and person doors which match existing or which complement the building facade.New or expanded patios, patio covers, awnings and canopies at the rear or sides of a building, except on the street side of a corner lot.Landscape deletion (i.e. shrubs and groundcovers) to accommodate new walkways which are required for building exiting purposes or handicap accessibility.ATM's proposed on an exterior wall of an existing bank in Commercial and Industrial districts.Minor changes to architectural elements which do not change the overall design of a building.Replacement of windows with roll-up doors (and vice versa) when located toward the interior side or rear of a site.Metal canopies over equipment storage yards at the rear of commercial or industrial sites, provided they are not visible from public streets or abutting a Residential or Mobile Home Park combining district or use.New loading areas and revisions to existing loading areas, when located toward the rear or side of a site, except for the street side of corner lots, or except if the project area abuts a Residential or Mobile Home Park combining district or use. <p>2) In all Residential Valley Floor "S" combining districts, minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building.</p>	<p><u>TOD districts</u>; minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building, with no loss of required parking, no net reduction in the number of on-site trees and no loss of protected trees as defined in Section X-2-7.01:</p> <ol style="list-style-type: none">New main entryways at the building front or street side which feature architectural projections (i.e. porticos, entryway roof covers, trellises, etc.).New or expanded patios, canopies/patio covers, trellises and awnings proposed at the front or street side of a building.New fountains or other decorative amenities.New loading areas and revisions to existing loading areas proposed at the front half of the building or lot, except where the project area abuts a Residential or Mobile Home Park combining district or use.ATM's proposed on a non-bank building and other pedestrian-oriented in-wall automated service machines. <p>2) In the Hillside <u>combining</u> district, minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building.</p> <ol style="list-style-type: none">Minor changes to architectural elements which do not change the overall design of a building.Windows, window awnings and person doors which match existing or which complement the building facade.
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<p>a. Awnings, patio covers, and gazebos which comply with height, setback, and yard coverage requirements. The applicant shall provide the Planning Division with written, signed consent of adjoining residential property owners and applicable homeowners association.</p> <p>b. Minor changes to architectural elements which do not change the overall design of a building.</p> <p>c. Windows and person doors which match existing or which complement the building facade.</p> <p>3) Minor exterior building changes for residences within Hillside <u>combining</u> <u>district</u> PUD's which are specifically conditioned to allow a staff approval process for alterations subsequent to initial construction of the home.</p>	
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E) Landscape Changes

<p>Planning Staff May Approve:</p> <p>1) Replacement planting of similar landscape materials and addition of landscaping. Landscaping shall comply with Ordinance No. 238 (water efficient landscape regulations).</p> <p>2) Deletion of non-required landscaping up to 200 square feet in area to accommodate modifications to existing developed sites; however <u>However</u>, in Commercial, and Industrial <u>and Mixed Use</u> districts, and for conditional uses within Residential Valley Floor "S" combining districts, no net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved.</p>	<p>Planning Commission Subcommittee May Approve:</p> <p>1) Deletion of non-required landscaping exceeding 200 square feet in area, to accommodate modifications to existing developed sites; h. <u>However</u>, in Commercial, and Industrial <u>and Mixed Use</u> districts, and for conditional uses within Residential Valley Floor "S" combining districts, no net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved.</p>
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F) Exterior Lighting

Planning Staff May Approve:	Planning Commission Subcommittee May
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<p>1) New light standards and wall-mounted light fixtures within Commercial, and Industrial and Mixed Use districts on those sites which do not involve or abut Residential or Mobile Home Park combining districts or uses. New light fixtures shall match existing on-site light fixtures in terms of height, style, design and wattage, and shall be spaced appropriately to maximize pedestrian safety.</p>	<p>Approve:</p> <p>1) New light standards and wall-mounted light fixtures in all Valley Floor "S" combining districts. New light fixtures shall match existing on-site light fixtures in terms of height, style, design and wattage, and shall be spaced appropriately to maximize pedestrian safety. Light fixtures shall be located and shielded to prevent glare onto Residential or Mobile Home Park combining districts or uses.</p>
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G) Parking Revisions, Restriping

<p>Planning Staff May Approve:</p> <p>1) Parking lot restriping, including deletion of stalls, in all Valley Floor "S" combining districts, provided that minimum parking ordinance requirements are met, except as provided in Section XI-10-54.15-3 of the Milpitas Municipal Code (recycling areas). However, there shall be no reduction in number of parking spaces if the site contains restaurants or banks. The following requirements shall apply:</p> <ol style="list-style-type: none"> In Commercial, and Industrial, Mixed Use, R3 and R4 districts, new driveways from public rights-of-way may not be approved. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate parking revisions. 	<p>Planning Commission Subcommittee May Approve:</p> <p>1) Parking lot restriping, including deletion of stalls, in all districts, including Hillside, provided that parking ordinance requirements are met, except as provided in Section XI-10-54.15-3 of the Milpitas Municipal Code (recycling areas).</p> <ol style="list-style-type: none"> No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate parking revisions.
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H) Fences, Walls

<p>Planning Staff May Approve:</p> <p>1) Fences in Commercial and Industrial districts, except for the Historical Commercial District, which comply with</p>	<p>Planning Commission Subcommittee May Approve:</p> <p>1) Fences in the Historical Commercial <u>Mixed Use</u> District which</p>
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<p>height and openwork construction requirements listed in Section XI-10-54.11 of the Milpitas Municipal Code (Fences), and which comply with the following:</p> <ol style="list-style-type: none"> Chain link or barb wire perimeter fencing may not be approved. Fencing/wall material and color shall be compatible with surrounding development. Fencing at the front or street side of a site in the Commercial or Industrial districts must consist of decorative wrought iron, steel picket or masonry construction (no chain link) and shall require Traffic Engineering clearance. Parking lot fencing/gates shall be cleared by the City's Fire Department. <p>2) Fences in Residential "S" combining districts, which comply with height and openwork construction requirements listed in Section XI-10-54.11 of the Milpitas Municipal Code (Fences), and which comply with the following:</p> <ol style="list-style-type: none"> Chain link or barb wire perimeter fencing may not be approved. Parking lot fencing/gates shall be cleared by the City's Fire Department. 	<p>meet the height and openwork construction requirements listed in Section XI-10-54.11 of the Milpitas Municipal Code (Fences) and which comply with City Council Resolution No. 6077. Any fencing/gates in parking lots requires clearance by the City's Fire Department.</p> <p>2) Chain link perimeter fencing in Commercial and Industrial districts, which comply with the following:</p> <ol style="list-style-type: none"> Fencing shall be at the rear or interior side of the site. The fencing shall consist of vinyl clad chain link with or without vinyl slats. Type of chain link fencing (i.e. deletion of vinyl clad requirement, use of slats) shall be to the discretion of the Planning Commission Subcommittee (i.e. in circumstances where the proposed fencing is to continue a line of existing chain link fencing). In all districts, fencing material and color shall be compatible with surrounding development. Parking lot fencing/gates shall be cleared by the City's Fire Department.
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(I) Building Additions

<p>Planning Staff May Approve:</p> <p>1) Residential building additions for legal, conforming single-family and two-family dwellings in the Valley Floor Residential "S" combining districts, and for legal, non-conforming residences in the R1 and R2 "S" Combining districts, and for legal conforming or non-conforming single-family dwellings in Hillside PUD's which specifically allow for staff approval, provided building height, parking, setback, yard coverage, impervious surface coverage, landscaping, open space and other ordinance requirements are met- (refer to Section 56.03 of this Chapter</p>	<p>Planning Commission Subcommittee May Approve:</p> <p>1) Commercial and Industrial building additions <u>for legal, conforming buildings, up to 10,000 square feet in size, provided that the site is not adjacent to a Residential or Mobile Home Park combining district or use, and that building height, parking, setback, yard coverage, Floor Area Ratio, landscaping, open space and other ordinance requirements are met. Size of building addition shall not exceed 5,000 square feet or ten percent (10%) of the existing building gross floor area, whichever is less. Calculation shall cumulatively</u></p>
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regarding non-conforming buildings). The following shall also apply:

- a. The building addition shall be on the rear half of the building and shall not exceed 200 square feet in size.
Exception: A building addition associated with a second family unit, per Section 4.03-6 of this Chapter, may exceed 200 square feet in size.
- b. The applicant shall provide the Planning Division with written, signed consent of adjoining residential property owners and applicable homeowners association.
- c. Existing front yard paving shall be brought into conformance.
- d. The addition shall comprise building materials, colors and style which complement the existing structure.

count all additions or enlargements completed since June 20, 2003. The following shall also apply:

- a. Architecture shall match that of existing building in terms of material, colors, style, etc.
 - b. The height of the addition shall not exceed the height of the adjacent portion of the existing building.
 - c. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an addition.
- 2) Residential building additions exceeding 200 square feet in size for legal, conforming single-family and two-family dwellings in the Valley Floor Residential "S" combining districts, and for legal non-conforming residences in the R1 and R2 district "S" Combining districts, and for legal conforming or non-conforming single-family dwellings in Hillside PUD's which are specifically conditioned not to require Planning Commission or City Council review for building additions, provided building height, parking, setback, yard coverage, impervious surface coverage, landscaping, open space and other ordinance requirements are met (refer to Section 56.03 of this Chapter regarding non-conforming buildings). The following shall also apply:
- a. The applicant shall provide the Planning Commission Subcommittee with written, signed consent of adjoining residential property owners and applicable homeowners association.
 - b. Existing front yard paving shall be brought into conformance.
 - c. The addition shall comprise building materials, colors and style which complement the existing structure.

J) Accessory Buildings

Planning Staff May Approve:

- 1) Accessory buildings in the Residential Valley Floor "S" combining districts, provided building height, parking, setback, yard coverage and other ordinance requirements are met. The following shall also apply:
 - a. Accessory buildings for conditional uses in Residential R1 and R2 districts and for permitted and conditional uses in R3 and R4 districts shall comprise building materials, colors and style which complement the existing main structure.
 - b. The applicant shall provide the Planning Division with written, signed consent of adjoining residential property owners and applicable homeowners association.

Planning Commission Subcommittee May Approve:

- 1) Accessory buildings up to 2,500 square feet in area in Commercial, ~~and~~ Industrial and Mixed Use districts, provided that the proposed structure is not adjacent to a Residential or Mobile Home Park combining district or use, and provided that building height, parking, setback, yard coverage, Floor Area Ratio, landscaping, open space and other ordinance requirements are met. The following shall also apply:
 - a. Accessory buildings must be located on the rear half of the lot. On corner lots, the accessory building must be set back from the adjacent street as least as far as the main building.
 - b. Accessory buildings must be of permanent construction (no modular buildings or metal buildings) with the exception of small pre-fabricated structures for chemical storage and the like, so long as such structures are adequately screened from public rights-of-way.
 - c. Architecture shall match that of the existing building in terms of material, colors, style, etc.
 - d. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an accessory building.

K) Trash/Recycling Enclosures, Transformers, Above Ground Tanks, Exterior Equipment, Equipment Enclosures and Storage Areas

Planning Staff May Approve:

- 1) Trash/recycling, equipment or storage

Planning Commission Subcommittee May Approve:

<p>enclosures up to 200 square feet in size in Commercial, and Industrial and <u>Mixed Use</u> districts, proposed at the rear of the building or lot and where least visible from public rights-of-way, and which comply with the following:</p> <ol style="list-style-type: none"> Enclosure may not be approved adjacent to a Residential or Mobile Home Park combining district or use. On the street side of corner lots, enclosure must be set back at least as far as the main building. Colors and materials of the enclosure shall complement the building and shall consist of masonry wall such as split face block or masonry finished to match the building or other solid screening material utilizing colors and materials which complement the building. Gates shall be solid metal painted to match the enclosure. The enclosure shall screen the dumpsters, trash compactors or equipment. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an enclosure. When feasible, sides and rear of the enclosure shall be landscaped. On-site parking shall meet ordinance requirements, except as provided in Section XI-10-54.15-3 of the Milpitas Municipal Code. <p>2) Chain link, slatted enclosures up to 200 square feet in size for trash/recycling, equipment or storage area purposes in Commercial and Industrial districts, only if such enclosure is an expansion of an existing chain link slatted enclosure, is at the rear of the building or site, is not visible from public rights-of-way, and complies with the following:</p>	<p>1) Trash/recycling, equipment or storage enclosures exceeding 200 square feet in size in Commercial, and Industrial and <u>Mixed Use</u> districts and enclosures for conditional uses in <u>Valley Floor Residential "S" combining districts</u> (except Hillside). The following shall apply:</p> <ol style="list-style-type: none"> Colors and materials of the enclosure shall complement the building and shall consist of masonry wall such as split face block or masonry finished to match the building. Gates shall be solid metal painted to match the enclosure. The enclosure shall screen the dumpsters or trash compactors. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an enclosure. When feasible, sides and rear of enclosure in all districts shall be landscaped. On-site parking shall meet ordinance requirements, except as provided in Section XI-10-54.15-3 of the Milpitas Municipal Code. Trash enclosures shall be located as far away as possible from Residential or Mobile Home Park combining districts or uses. Enclosures for noise-generating equipment (i.e. generators) may not be approved near Residential or Mobile Home Park combining districts or uses. <p>2) New chain link enclosures for trash/recycling, equipment or storage purposes in Commercial and Industrial districts, provided the enclosure is not visible from public rights-of-way. The following shall apply:</p> <ol style="list-style-type: none"> Enclosure shall consist of vinyl clad
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<p>a. Enclosure may not be approved adjacent to a Residential or Mobile Home Park combining district or use.</p> <p>b. The enclosure shall screen the dumpsters, trash compactors or equipment.</p> <p>c. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an enclosure.</p> <p>d. When feasible, sides and rear of the enclosure shall be landscaped.</p> <p>e. On-site parking shall meet ordinance requirements, except as provided in Section XI-10-54.15-3 of the Milpitas Municipal Code.</p> <p>3) Above ground transformers, tanks and other exterior equipment in Commercial, and Industrial and Mixed Use districts, which are located at the rear of the building or lot and which comply with the following:</p> <p>a. Equipment shall not be approved adjacent to a Residential or Mobile Home Park combining district or use.</p> <p>b. Equipment shall be completely screened from view by dense shrubbery, masonry wall such as split face block or masonry finished to match the building, or other solid screening material utilizing colors and materials which complement the building. Chain link fencing with or without slats may not be approved <u>in the Mixed Use district, but may be approved in the Commercial and Industrial districts if unless it is an expansion of an existing approved chain link enclosure and it is not visible from public viewing points (see #2 above).</u></p> <p>c. On the street side of corner lots, the equipment and its screening must be set back at least as far as the main building,</p>	<p>chain link with or without matching vinyl slats. Coloring and use of slats shall be to the discretion of the Planning Commission Subcommittee.</p> <p>b. The enclosure shall not remove any trees or required parking.</p> <p>3) Above ground transformers, tanks, and other exterior equipment in Commercial, and Industrial and Mixed Use districts and for conditional uses in <u>Valley Floor Residential "S" Combining districts (except Hillside).</u> The following shall apply:</p> <p>a. The equipment shall be set back from adjacent streets as least as far as the main building and shall be screened from view by dense shrubbery, masonry wall such as split face block or masonry finished to match the building, or other screening material utilizing colors and materials which complement the building. <u>The In Commercial and Industrial districts, the Subcommittee shall have the</u> discretion to approve vinyl clad chain link fencing with or without matching vinyl slats, depending on the visibility of the location.</p> <p>b. In all districts, on-site parking shall meet minimum standards.</p> <p>c. In Commercial and Industrial districts, a No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate a tank, transformer or other equipment.</p> <p>d. In Commercial and Industrial districts, installed height of the transformer, tank or equipment shall not exceed the building height. Exception: Equipment exceeding building height may be approved if it is proposed at the rear of the building, and the applicant can demonstrate with line-of-sight drawings that the equipment will not</p>
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<p>d. On-site parking shall meet minimum standards.</p> <p>e. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas municipal Code, may be approved to accommodate a tank, transformer or equipment.</p> <p>f. <u>In Commercial and Industrial districts, the installed height of the transformer, tank or equipment shall not exceed ten (10) feet. In the Mixed Use district, the installed height shall not exceed six (6) feet.</u></p> <p>4) Temporary contractor's office trailers and construction -related storage trailers in undeveloped and developed sections of the City, <u>shall which comply with the following:</u></p> <p>a. The location of such trailers shall not obstruct driveways <u>and-or</u> traffic access aisles; <u>and-the applicant shall</u> demonstrate that parking will not be negatively impacted.</p> <p>b. The colors and materials shall complement the main building, if one exists.</p> <p>c. Any exterior noise-generating equipment associated with trailers shall not be within 300 feet of a Residential or Mobile Home Park combining district or use.</p> <p>d. The trailers shall be removed upon cessation of permitted construction activity.</p>	<p>be seen from public viewing points. <u>In the Mixed Use district, the installed height shall not exceed six (6) feet.</u></p> <p>e. If adjacent to a Residential or Mobile Home Park combining district or use, installed height of the equipment shall not exceed six (6) feet.</p> <p>f. In Commercial and Industrial districts, <u>Generators may not be approved if located adjacent to a Residential or Mobile Home Park combining district or use.</u></p>
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22.04 Conditional Uses

The following are conditional uses in the Town Center District and may be applied for in any of the sub-areas provided that it meets the purpose and intent of the Town Center District.

- 22.04-1 Alcoholic Beverage Sales, both on-site consumption or off-site sales.
- 22.04-2 Automatic Teller Machines (ATM's) or other type walk-up window facility.
- 22.04-2.1 Billiard center. (Ord 38.688, 3/15/94)
- 22.04-3 Bus Terminal, Cab Stand, or other Transit Facilities.
- 22.04-3.1 Small and large family day care home, and day care center (Ord 38.702, 8-15-95)
- 22.04-3.2 Farmer's market, excluding flea markets.
- 22.04-4 Hotels or Motels, excluding Adult Motels/Hotels, Businesses, as defined in subsection 54.18. (Ord 38.711, 8/20/96)
- 22.04-5 Mailbox Rentals.
- 22.04-6 Public and quasi-public uses, as defined in section 2.67 (b) and 2.67 (c),
appropriate to or customarily located in the "TC" District and intended to serve
the whole City and/or region. ~~"Quasi-public use" shall mean a use operated by a
private non-profit educational, religious, recreational, charitable, or medical
institution; such use have the purpose primarily of serving the general public
and including uses such as churches, private schools, community, youth and
senior citizen recreational facilities, private hospitals, Government facilities, and
the like.~~ (21)
- 22.04-7 Residential developments of up to forty (40) units per acre provided that the
Commission makes a finding that the location of such a use is appropriate and in
conformance with the purpose and intent of the Town Center District specified in
Section 22.01 above.
- 22.04-8 Storage Garages and Off-Street Parking Facility.
- 22.04-9 Theater, restaurant, restaurant which includes internet usage for customers, bar,
night club or other major entertainment facility, intended and designed to serve
the City as a whole, excluding Adult Businesses, as defined in Subsection 54.18.
(Ord 38.711, 8/20/96) (35)
- 22.04-9.05 Tutoring centers.
- 22.04-9.1 Vehicle Oriented Window Service. (Ord. 38.693, 9/20/94)
- 22.04-10 Video Rental Store.
- 22.04-11 Any other retail business or service establishment, excluding Adult Businesses,
as defined in Subsection 54.18, that the Commission finds not to be inconsistent
with the purpose of this Article and will not impair the present or potential use of
adjacent properties. (Ord 38.711, 8/20/96)

22.05 Development Standards**22.05-1 Height Regulations:**

There shall be no specific height limitation in the Town Center District; provided, however, that before the construction of any structure which exceeds thirty-five (35) feet in height shall be authorized, the Commission must make a finding that any such excess height will

Installation of an irrigation system shall be provided for in each planter area (Ord 38.665, 10/29/91)

53.10 Lighting

All lights used to illuminate a parking area shall be designed, located and arranged so as to reflect the light away from any street and any adjacent premises.

53.11 Signs

Directional signs are permitted in parking areas in accordance with the adopted Sign Ordinance.

53.12 Fencing

A solid masonry wall a minimum height of six (6) feet shall be required on all common property lines when any parking area is established abutting residentially zoned property or property shown on the adopted general Plan as being Residential. The architectural design of said wall shall be to the approval of the Planning Commission.

53.13 Sales, Storage and Advertising

The sale or storage of merchandise in permissive parking areas may be allowed by the Planning Commission as provided for in section 42 of this Chapter and subject to such reasonable conditions as may be deemed necessary by the Commission to insure adequate parking, access and circulation.

In no event shall any off-street parking space (permissive or otherwise) or lot be used for the stopping, standing or parking of any vehicle(s) for either the purpose of selling such vehicle (excluding an approved car sales lot), or advertising any other property, services or products on said vehicle. (Ord 38.665, 10/29/91)

53.14 Compact Stalls

53.14-1 For parking areas and garages containing ten (10) or more stalls serving the following industrial uses within the industrial zoning districts, up to forty (40%) percent of the required and non-required stalls may be designed as compact stalls to accommodate compact cars:

- a. Research and Development (R&D) facilities
- b. Manufacturing plants
- c. Warehouse/distribution facilities
- d. Other industrial uses deemed appropriate by the Planning Commission.

(Ord. 38.675, 10/20/92, Ord. 38.708, 08/06/96)

53.14-2 Each stall shall be legibly marked "compact stall" or "small car" on the stall surface. Compact stalls may be used only for the above listed buildings and uses and only within the Industrial zoning districts. (Ord. 38.708, 08/06/96)

53.14-3 No compact parking spaces shall be allowed for any commercial uses or in any commercial zoning districts except as otherwise provided for in Section 38 for MXD Zoning District requirements.

53.15 Bicycle or Motorcycle Spaces

Any existing or proposed parking facility may utilize, on a substitution basis, on-site parking spaces for bicycle or motorcycle spaces.

- a) Said bicycle spaces shall be raised a minimum of six (6) inches from grade of the adjacent parking facility.

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In the case of a use not specifically mentioned in Section 53.23, the requirements for off-street parking facilities shall be determined by the Commission based on uses which create similar demands for off-street parking spaces. The Commission may draw upon the experience of other local cities to make their decision. (Ord 38.665, 10/29/91)

53.07 Joint Use

The Commission may authorize the joint use of parking facilities by the following uses or activities under the following conditions:

- a) Up to fifty (50%) percent of the parking facilities required by this section for a church, theater or bowling alley may be supplied by the off-street parking facilities provided by certain other types of buildings or uses specified in Section 53.07(c). (Ord 38.665, 10/29/91)
- b) Up to fifty (50%) percent of the off-street parking facilities required by this section for any building or use specified under (c) below may be supplied by the parking facilities provided for uses specified in Section 53.07(d).
- c) For the purposes of this section, the following uses are considered as day-time uses; banks, business offices, retail stores, personal service shops, household equipment or furniture shops, clothing or service shops, manufacturing or wholesale buildings and other similar primarily day-time uses when authorized by the Commission.
- d) For the purposes of this section, the following uses are considered as night-time or Sunday uses; auditoriums incidental to a public or private school, churches, bowling alleys, theaters and other similar primarily night-time uses when authorized by the Commission.
- e) Conditions required for joint use:
 - 1) The building or use for which application is being made to utilize the off-street parking facilities provided by another building or use, shall be located within three hundred (300) feet of such facilities.
 - 2) The applicant shall show that there is no substantial conflict in the principal operating hours of the two (2) buildings or uses for which joint use of off-street parking facilities is proposed.
 - 3) If joint use occurs between more than one parcel or in a condominium setting, a properly drawn legal instrument, executed by the parties concerned for joint use of off-street parking facilities, duly approved as to form and manner of execution by the City Attorney and recorded with the County Recorder. Joint use parking privilege shall continue in effect only so long as such an instrument, binding on all parties, remains in force. If such instrument becomes legally ineffective, then parking shall be provided as otherwise required by this Chapter. (Ord 38.665, 10/29/91)

23

53.08 Required Improvements

All parking areas and access driveways shall have a smoothly graded, stabilized and dustless surface with adequate drainage so that injury will not be caused to adjacent properties. Bumper guards or curbs shall be provided in order to define parking spaces or limits of paved areas.

Also refer Section 54.03 of this Chapter for Improvement of Parking Areas.

53.09 Screening and Landscaping

All open automobile parking areas which abut upon a public street right-of-way shall provide landscaping to a depth of at least ten (10) feet of said street right-of-way and of any adopted plan line, with openings for walkway or drive purposes. Each landscaped planter in said parking facility shall be contained with a six (6) inch raised concrete curb (extruded curbing not permitted).

Section 2 Definitions

Add text and revise numbering, as follows:

2.69.1 Second Family Unit

A dwelling attached to, and visually a part of, a single-family dwelling on a corner lot zoned R1, with a 6,000 square-foot minimum lot size. The second family unit is not intended for sale or transient habitation, but may be rented for long-term occupancy. It may have its own kitchen and separate entrance from that of the main dwelling, and it may have internal access to the main dwelling. Refer to Section 4.03-6 of this Chapter for development standards.

24

2.69.2 Slope

Same as "Natural Land Slope". (Ord. 38.355, 9/16/75)

2.69.3 Slope Stability

Slope stability is the relative ability of slopes to retain their frictional resistance to downslope movement. (Ord. 38.355, 9/16/75)

Add to Section 4 "R1" Single Family Residence District:

Black text has been moved from the Conditional Uses section of the R1 chapter. Red text is completely new proposed text.

4.03-6 Second family unit. A second family unit may be allowed on a single-family residence zoned lot subject to all of the following criteria:

- 6.1 The second family unit is not be intended for sale shall not be sold to a different owner than the main residence and may be rented.
- 6.2 The lot is zoned "R1" and contains an existing single-family detached dwelling.
- 6.4 The second family unit is attached to the existing residence and is located within the living area of the existing dwelling. "Living area" means the interior inhabitable area of a dwelling unit, including basements and attics, but shall not include a garage or any accessory structure.
- 6.5 The second family unit shall not be larger than four hundred seventy-five (475) square feet in size.
- 6.6 Whenever an increase in floor area is involved, it shall not exceed thirty (30%) percent of the existing dwelling floor area.
- 6.7 The second family unit shall not have more than one (1) bedroom or more than one (1) kitchen.
- 6.8 Any construction shall conform to height, setback, lot and yard coverage requirements, architectural review, site plan review, fees, charges and other zoning requirements generally applicable to residential construction in the zone in which the property is located.
- 6.8 Parking requirements: one (1) off-street parking space for the second family unit and two (2) off-street parking spaces for the main dwelling. Tandem parking is allowed. Parking spaces shall measure ten (10) feet by twenty (20) feet, and be improved as provided in Subsection 54.03.
- 6.9 The second family unit shall be designed to be architecturally compatible and visually integrated with the main dwelling, so that the combined units of the building retain the appearance of a typical single-family dwelling. It shall employ design, materials and colors matching those of the main dwelling.
- 6.10 Local building code requirements shall apply to additions to existing single-family dwellings, as appropriate.
- 6.11 One (1) of the two (2) units shall be occupied by the owner of the property, at the time of application submittal.
- 6.12 If City staff believe that an additional residential unit will impact traffic flow along the residential street, then the applicant shall provide a traffic impact analysis for staff review. The applicant shall comply with the recommendations contained in the traffic impact analysis.

A second family unit which conforms to the requirements of this section shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot. The second family units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

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Delete from Section 4.04 "R1" Conditional Uses:

~~4.04-4 Second-family units.~~

~~A second family unit may be allowed on a single-family zoned lot subject to the following criteria:~~

~~4.1 The second family unit is not intended for sale and may be rented.~~

~~4.2 The lot is zoned "R1", is a minimum of 6,000 square feet in size, and is located on a corner.~~

~~4.3 The lot contains an existing single-family detached unit.~~

~~4.4 The second unit is attached to the existing residence and is located within the living area of the existing dwelling.~~

~~4.5 Whenever an increase in floor area is involved, it shall not exceed ten (10%) percent of the existing area.~~

~~4.6 The second unit cannot be larger than four hundred seventy-five (475) square feet in size.~~

~~4.7 The second unit cannot have more than one (1) bedroom.~~

~~4.8 Any construction shall conform to height setback, lot coverage, architectural review, site plan review, fees, charges and other zoning requirements generally applicable to residential construction in the zone in which the property is located.~~

~~4.9 Local building code requirements which apply to additions to existing single-family dwellings, as appropriate.~~

~~4.10 One (1) of the two (2) units shall be occupied by the owner of the property.~~

~~As used in this section, "living area" means the interior inhabitable area of a dwelling unit including basements and attics and shall not include a garage or any accessory structure.~~

~~A second residential unit which conforms to the requirements of this section shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot. The second units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.~~
~~(Ord 38.605, 6/3/86)~~

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2.37-1 Erosion

Erosion is the wear and removal of the material in the earth's crust from one site and the deposition at another. (Ord. 38.355, 9/16/75; Ord. 38 (part), 3/15/55)

2.37-2 Expansive Soils

Expansive soils are earth materials, which greatly increase in volume when they absorb water and shrink when they dry. (Ord. 38.355, 9/16/75; Ord. 38 (part), 3/15/55)

2.38 Family

An individual, or two (2) or more persons related by blood or marriage, or a group of not more than five (5) persons (excluding servants) not related by blood or marriage, living together as a single housekeeping unit in a dwelling unit, (Ord. 38 (part), 3/15/55)

2.38-1 Family Day Care Homes

A home in which care, protection, and supervision of twelve (12) or fewer children is regularly provided for periods of less than twenty-four (24) hours per day, while the parents or guardians are away, and includes the following:

- a) "Large family day care home" which means a home in which family day care is provided to seven (7) to twelve (12) children, including children under the age of ten (10) who reside at the home.
- b) "Small family day care home" which means a home in which family day care is provided to six (6) or fewer children, including children under the age of ten (10) who reside at the home. (Ord. 38.702 (2) (part), 8/15/95; Ord. 38.339, 2/19/74; Ord. 38 (part), 3/15/55)

2.38-2 Floor Area Ratio

Floor Area Ratio (FAR) is defined for non-residential Zoning Districts as the maximum permitted ratio of gross floor area (as defined in Section 2.41-1.2) to site area and is calculated as follows:

$$\text{FAR} = \frac{\text{Total of Gross Floor Area for All Structures on Site}}{\text{Site Area}}$$

Increases above the maximum permitted FAR for any district can be allowed with approval of a Use Permit by the Planning Commission. This can be considered when the applicant can demonstrate that the proposed development will (1) generate low peak-hour traffic; (2) will not create a dominating visual prominence. Examples of such uses include wholesaling, distribution and hospitals. In each case where an increase in the maximum permitted FAR has been allowed, all other development standards for the site must be met. (Ord. 38.713 (1) (part), 12/3/96)

2.39 Frontage

All the property fronting on one side of a street between intersecting or intercepting streets, or between a street and a right-of-way, waterway, end of dead-end street, or city boundary, measured along the street line. An intercepting street shall determine only the boundary of the frontage on the side of the street which it intercepts. (Ord. 38 (part), 3/15/55)

25

2.39.1 Game Machine, Mechanical or Electronic

Mechanical or electronic game machine shall mean any machine, apparatus, contrivance, appliance, or device which may be operated or played upon the placing or depositing therein of any coin, check, slug, ball, token, or any other article or device, or by paying therefore either in advance or after use, involving in its use either skill or chance, including, but not limited to tape machine, card machine, pinball machine, bowling game machine, shuffleboard machine, marble game machine, horse racing machine, basketball game machine, baseball game machine, football game machine, electronic video game or any other similar machine or device, exclusive of food, beverage and tobacco vending machine. (Ord. 38.551, 9/7/82; Ord. 38 (part), 3/15/55)

2.40 Garage, Private

A detached accessory building or portion of a main building for the parking or temporary storage of automobiles of the occupants of the premises. (Ord. 38 (part), 3/15/55)

2.41 Garage, Public

A building, other than a private garage, used for the care, repair, or equipment of automobiles, or where such vehicles are parked or stored for remuneration, hire or sale. (Ord. 38 (part), 3/15/55)

2.41.1 Ground Rupture

Ground rupture is the physical cracking of the earth's surface along fault traces during an earthquake due to movement in the earth's crust on opposing sides of the fault trace. (Ord. 38.355, 9/16/75; Ord. 38 (part) 3/15/55)

2.41-1.1 Gross acreage

Area of a site calculated to the centerline of bounding streets and other public rights-of-way. (Ord. 38.759 (part), 4/2/02)

2.41-1.2 Gross Floor Area

The total of all floors measured from the interior faces of the building, but not including the areas for parking which are wholly underground, such as basements, unroofed inner courts or shaft enclosures unless any outdoor areas are used for retail purposes. An exception is made for all districts within the Midtown Plan Area in which all areas within the building(s) devoted to parking shall be excluded.

25

2.41-2 Guest House Accessory Building

Guest House Accessory Building shall mean one accessory structure, used for the accommodation of guests. Said guest house shall not contain any kitchen or cooking facilities but may contain one (1) bedroom, one (1) living area and one (1) bathroom, and shall be limited in floor area to a maximum of twenty (20) percent of the total floor area of the main residence. (Ord. 38.646 (A), 8/1/99 (part); Ord. 38 (part) 3/15/55)

2.41-3 Habitable Space

A room designed for living, sleeping, eating or food preparation, including but not limited to a den, study, library, home office, sewing room or recreational room and excluding such areas as garages.

2.42 Home Occupation

28

Revise as follows:

"R1" Single-Family Residence District

Accessory Uses

4.03-5 Small family ~~day~~child care home (Ord. 38.702, 8-15-95, amending Ord 38.339, 2/19/74)

27

4.03-6 Large family child care home, as provided for in Subsections 53.23-6 through 53.23-8 and 54.16.

26

Conditional Uses

4.04-6 ~~Large family day care and day~~Child care center (Ord. 38.702, 8-15-95)

26
27

R2 district

Accessory Uses

6.03-5 Small family ~~day~~child care home (Ord. 38.702, 8-15-95, amending Ord 38.339, 2/19/74)

27

6.03-6 Large family child care home, as provided for in Subsections 53.23-6 through 53.23-8 and 54.16.

26

Conditional Uses

6.04-6 ~~Large family day care and day~~Child care center (Ord. 38.702, 8-15-95)

26
27

R3 district

Accessory uses

7.03-5 Small family ~~day~~child care home (Ord 38.702, 8-15-95)

7.03-6 Large family child care home, as provided for in Subsections 53.23-6 through 53.23-8 and 54.16.

27

26

Conditional Uses

7.04-4 ~~Large family day care and day~~Child care center (Ord 38.702, 8-15-95;
Deleted. (Ord 38.591, 11/5/85)

26

27

R4 district

Accessory uses

8.03-4 Small family ~~day~~child care home.

8.03-5 Large family child care home, as provided for in Subsections 53.23-6 through 53.23-8 and 54.16.

27

26

Conditional Uses

8.04-3 ~~Large family day care homes and day~~Child care centers.

26

27

CO district

Conditional uses

17.04-9 Small and large family ~~day~~child care home, and ~~day~~child care center. Refer to Subsections 53.23-6 through 53.23-8 and 54.16 for standards. (Ord 38.702, 8-15-95)

27

MXD district

Permitted uses

38.02-5 Small family day-child care home.

(27)

38.02-6 Large family child care home, as provided for in Subsections 53.23-6 through 53.23-8 and 54.16.

(26)

Conditional Use Permit

38.03-1(l) Large family day care homes and dayChild care centers. Refer to Subsections 53.23-6 through 53.23-8 and 54.16 for standards.

(26) &

(27)

A district

Conditional uses

40.04-2.1 Small and large family day-child care home, and day-child care center. Refer to Subsections 53.23-6 through 53.23-8 and 54.16 for standards. (Ord 38.702, 8-15-95)

(27)

Off-Street Parking Regulations

(27)

53.23-6 Child Day-Care Uses

.1 Single family, duplexes and multi-family residences -- shall be the same number of spaces required in residential districts. (Ord 38.702, 8-15-95)

.2 Day-Child care facilities serving more than ~~six~~eight children -- 1 sp/1.5 employees. (Ord 38.702, 8-15-95)

(27)

.3 Schools other than day-child care centers -- 1 sp/classroom or 1 sp/500 sq. ft. gross floor area. (Ord 38.702, 8-15-95)

(27)

53.23-7 Loading/Unloading Child Day-Care Uses

(27)

Day-Child care facilities -- 1 sp/6 children up to 5 spaces and thereafter 1 sp/10 children. Driveways, garage aprons and street frontage may be counted if appropriate permits are first received when calculating spaces for day-child care homes. Tandem spaces are prohibited. (Ord 38.702, 8-15-95)

27

53.23-8 Exceptions for Child Day-Care Requirements

27

The parking and loading/unloading space requirements for day-child care facilities included in Section XI-10-53.23-6 may, in the Planning Commission's discretion, be reduced, based on an empirical study (provided by the applicant) which establishes no adverse effects will occur as a result. The required number of loading/unloading spaces may be reduced without a study by one (1) space for each employee permanently assigned to load and unload children from vehicles. (Ord 38.702, 8-15-95)

54.16 Large Family Day-Child Care Home and Day-Child Care Center Development Standards

(Ord. 38.701, 8-15-95 - Adopted Sec. 54.16 in its entirety)

26

Purpose: The purposed of provisions dealing with day-child care facilities is to allow regulation of such facilities to the extent provided herein. However, nothing is intended to allow regulation to a greater extent than allowed by State law.

26

1. Off-Street Parking Requirements:

There shall be provided off-street parking spaces for automobiles in accordance with the requirements of Section 53. All such parking spaces shall be improved as provided for in Subsection 54.03.

2. Hours of operation:

Hours of operation shall be determined through the Use Permit process and shall be based on compatibility with neighboring properties and other planning principles as set forth in Section XI-10-57.

3. Fence Height:

Outdoor play areas shall be enclosed with a six-foot high fence. The fence type shall be determined through the Use Permit process based on compatibility compatible with neighboring properties and other planning principles as set forth in Section XI-10-57.

26

4. Code Enforcement Procedures:

If any Large Family Day-Child Care Home and/or Day-Child Care Center is operating in a manner which constitutes a nuisance, the Use Permit shall be reviewed by the City Planning Commission with a recommendation to the City Council pursuant to Section 63.06 (Revocation, Suspension and Modification)

26

27

Definitions section

Delete section as follows:

~~XI-10-2.29-1 Day Care Center~~

~~Any child care facility other than a family child care home, and includes infant centers, preschools, and extended day care facilities. (Ord. 38.702 (1) (part), 8/15/95)~~

29

Add section, revise wording to reflect new State terminology, augment definition with language from State law, and renumber subsequent sections as follows:

XI-10-2.26-1 Child Care Center

Any child care facility other than a family child care home, in which less than 24-hour per day nonmedical care and supervision are provided to children in a group setting. It includes infant centers, preschools, and extended child day care facilities. (Ord. 38.702 (1) (part), 8/15/95)

27

2.26-1XI-10-2.26-2 Commercial Fueling Facility

"Commercial fueling facility" is a fueling facility designed for commercial customers which dispenses gasoline, diesel, or similar vehicle fuels, and which is not open to the general public, has no cash sales and provides no personal services on-site, provided that said facility is located not closer than five hundred (500) feet from any residentially zoned district or any area designated on the General Plan as being "residential" or any mobile home park. (Ord. 38.654 (A) (part), 3/20/90)

27

2.26-1.1XI-10-2.26-3 Class A Office Space

A high quality, modern building with large floor plates and amenities that typically attracts rents in the top twenty-five percent (25%) bracket. (Ord. 38.759 (part), 4/2/02)

27

2.26-2XI-10-2.26-4 Condominium

27

"Condominium" is an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial building on such real property, such as an apartment, office, or store. A condominium may include in addition a separate interest in other portions of such real property. Such estate may, with respect to the duration of its enjoyment, be either of the following:

1. An estate of inheritance or perpetual estate.
2. An estate of life.
3. An estate for years, such as leasehold or sub-leasehold. (Ord 38 (part), 3/15/55)

2.26-3XI-10-2.26-5 Condominium Conversion

(27)

"Conversion" is a change in the type of ownership of a parcel or parcels of land, together with the existing attached structures, to that defined for a condominium project or a community apartment project regardless of the present or prior use of such land and structures and whether substantial improvements have been made or are to be made to such structures. (XI-10-2.26-1 and Ord. 38.485, 7/3/79; Ord. 38 (part), 3/15/55)

2.26-4XI-10-2.26-6 Commercial Athletic Facility

(27)

A building or site equipped for physical training or athletic type games and sports, such as but not limited to, health spas, tennis, gymnasiums, handball courts, racquetball courts; also including ancillary uses when incidental to the primary use, such as but not limited to, steam baths, weight training, aerobic classes, massage, saunas, and the retailing of athletic supplies to be used in the facility. (Ord. 38.694 (1) (part), 10/4/94)

2.26-5XI-10-2.26-7 Commercial Service

(27)

Establishments which provide non-medical services of a retail character to patrons which may involve the sale of goods associated with the service being provided. These establishments include businesses that provide both personal and business services, but not industrial services.

Any assembly, processing or customization of products on the premises must be incidental and integral to the retail sale of the product. All such completed products must be sold on the premises and may not be distributed to another location for future retail sale or wholesale or for storage to be shipped to another location where the product is sold. This restriction shall not preclude the sale of completed products that are delivered or shipped to the retail customer. The total floor area devoted to assembly, processing, customization and packaging of

Section 2 Definitions

Revise text as follows:

2.38-1 Family Day-Child Care Homes

A home in which care, protection, and supervision of twelve ~~(12)~~ fourteen (14) or fewer children is regularly provided, in the care giver's own home, for periods of less than twenty-four (24) hours per day, while the parents or guardians are away. Such homes are licensed by the State of California and includes the following:

- a) "Large family day-child care home" which means a home in which family day-child care is provided to ~~seven (7) to twelve (12)~~ nine (9) to fourteen (14) children, including children under the age of ten (10) who reside at the home.
- b) "Small family day-child care home" which means a home in which family day care is provided to ~~six (6) to eight (8)~~ eight (8) or fewer children, including children under the age of ten (10) who reside at the home. (Ord. 38.702 (2) (part), 8/15/95; Ord. 38.339, 2/19/74; Ord. 38 (part), 3/15/55)

27

C1 district

Conditional uses

18.03-4.1 Small and large family ~~day-child~~ care home, and ~~day-child~~ care center.
Refer to Subsections 53.23-6 through 53.23-8 and 54.16 for standards. (Ord
38.702, 8-15-95)

27

C2 district

Conditional uses

19.03-9.1 Small and large family ~~day-child~~ care home, and ~~day-child~~ care center.
Refer to Subsections 53.23-6 through 53.23-8 and 54.16 for standards. (Ord
38.702, 8-15-95)

27

HS district

Conditional uses

21.03-5.1 Small and large family ~~day-child~~ care home, and ~~day-child~~ care center.
Refer to Subsections 53.23-6 through 53.23-8 and 54.16 for standards. (Ord
38.702, 8-15-95)

27

TC district

Conditional uses

22.04-3.1 Small and large family ~~day-child~~ care home, and ~~day~~
child care center. Refer to Subsections 53.23-6 through 53.23-8
and 54.16 for standards. (Ord 38.702, 8-15-95)

27

Revise Subsection 54.16 as follows:

54.16 Large Family Day-Child Care Homes and Day-Child Care Centers Development Standards

(Ord. 38.701, 8-15-95 - Adopted Sec. 54.16 in its entirety)

54.16-1 Purpose: The purpose of provisions dealing with day-child care facilities is to allow regulation of such facilities to the extent provided herein. However, nothing is intended to allow regulation to a greater extent than allowed by State law.

54.16-2 Large family child care homes may be approved administratively by the Planning Division, provided that the applicant submits information to the Planning Division demonstrating compliance with applicable development standards listed in Subsection 54.16-4, and the applicant obtains approval from the Fire Department.

54.16-3 Child care centers shall require approval of a Conditional Use Permit by the Planning Commission, as per Section 57 of this Chapter. The applicable development standards listed in Subsection 54.16-4 shall be addressed in the Use Permit process.

54.16-4 Development Standards:

54.16-24.1 Density:

Large family child care homes shall be spaced at least three hundred (300) feet apart from each other. This spacing requirement does not apply to small family child care homes.

54.16-4.2 Off-Street Parking Requirements:

There shall be provided off-street parking spaces for automobiles in accordance with the requirements of Section 53. All such parking spaces shall be improved as provided for in Subsection 54.03.

54.16-34.3 Hours of operation:

For large family child care homes, hours of operation shall not occur before 6:30 A.M. or after 7:30 P.M., in order to maintain compatibility with neighboring properties and limit noise during night-time hours. Hours of operation for child care centers shall be determined through the Use Permit process and shall be based on compatibility with neighboring properties and other planning principles as set forth in Section XI-10-57 of this Chapter.

~~54.16-3~~54.16-4.4 Fence Height:

Outdoor play areas for child care centers shall be enclosed with a six-foot high fence. The fence type shall be determined through the Use Permit process based on compatibility with neighboring properties and other planning principles as set forth in Section ~~XI-10-57~~ of this Chapter.

54.16-5 Code Enforcement Procedures:

If any large family ~~Day-child~~ care home is operating in a manner that constitutes a nuisance, the child care facility operator shall work with the Planning Division to address the nuisance, through such actions as adjusting hours of operation, adjusting hours of outdoor play, staggering times for child drop-off and pick-up, and the like. ~~and If any day-child care center is operating in a manner which constitutes a nuisance, the Planning Commission shall reopen the Use Permit to add or change conditions of approval addressing the issue(s) shall be reviewed by the City Planning Commission. If the nuisance continues, the Planning Commission may review the Use Permit with a recommendation to the City Council pursuant to Section 63.06 (Revocation, Suspension and Modification).~~

Section 7 "R3" Multiple Family District

Delete this section and move to the General Provisions section (Sec. 54.20), since the condominium conversion regulations now apply to both the R3 and R4 districts, and not just the R3 district alone. Reference section 7.14 as having been move to Section 54.19.

~~7.14 Condominium Conversions~~**~~7.14-1 Purpose~~**

~~The City of Milpitas is concerned with maintaining an adequate supply of housing for its citizens including rental housing. The adopted Housing Element of the Milpitas General Plan contains the following goal statements, pertinent to this matter:~~

- ~~(a) To encourage the provision of a variety of individual choice of tenure, housing type, and location.~~
- ~~(b) Within our ability, to provide opportunities for Milpitas citizens to meet their housing needs in the housing market.~~
- ~~(c) To encourage the cooperation within the housing market so that suppliers and consumers can function more effectively, consistent with community growth goals.~~
- ~~(d) That zoning is to be used in ways which will encourage variety and mix in housing types and provide adequate sites for housing persons of all races, ages, ethnic groups, and income levels in Milpitas. Housing is considered a basic necessity and any scarcity within the community area has both a direct and indirect adverse impact on public safety, health and welfare (including but not limited to, health and safety problems relating to the quality of housing). In times of low vacancy rate and high housing cost many people cannot afford to buy homes within the community or its nearby market area and are forced to rent housing in apartments or other multiple dwellings. The unregulated conversion of rental apartment units to condominiums ownership may aggravate such a serious situation and force citizens to move out of the community.~~

~~7.14-2 Declaration of Housing Shortage~~

~~When the number of vacant apartments being offered for rent or lease in the City is equal to or less than six (6) percent of the total number of such dwelling units offered for and under rental or lease agreement in the City, a housing shortage exists which is inconsistent with the purposes of this chapter and with the declared goals of the City relating to its Housing Element of its adopted General Plan.~~

~~7.14.3 Determination of Vacancy Rate and Surplus~~

~~Whenever an application for a condominium conversion is filed, the Planning Division shall conduct a vacancy rate survey of the existing rental apartment dwelling units in the City. This survey shall be completed within forty-five (45) days from the date the application for condominium conversion is deemed complete.~~

~~7.14.4 Surplus Required for Conversion Application~~

~~An application for condominium conversion of existing multiple family rental housing units to residential condominium ownership shall not be approved unless there is a vacancy surplus of existing apartments which equals six (6%) percent or greater of the total number of such units, within the City, as of the most recent determination made pursuant to Section 7.14.3; and if all of the adult tenants lawfully in possession of two-thirds of the units indicate their desire to convert such project to condominium ownership, in writing, to the City. In no event shall a number of lots, parcels, units, or rights of exclusive occupancy proposed exceed the vacancy surplus by forty (40) percent. Nothing herein contained shall be construed to prevent the payment of any consideration by landlord to tenant, provided however, consent obtained by payment to a tenant shall not be considered by the Council to be a free and willing consent unless payment of the same consideration is made to all tenants regardless of consent.~~

~~7.14.5 Development Standards~~

~~The following standards are required for any Residential Condominium Conversion development:~~

- ~~(a) Off-Street Parking: Conformance to the current off-street parking standards as contained in Section 7, "R3" Multi-Family District.~~

- ~~(b) Landscape & Open Space: Conformance to the current landscape and open space requirements as contained in Section 7, "R3" Multi-Family District.~~
- ~~(c) Housing and Fire: Conformance to the current Housing codes and Fire Regulations of the City of Milpitas.~~
- ~~(d) Meters and Control Valves: The consumption of gas and electricity within each unit shall be separately metered so that the unit owner can be separately billed for each utility. A water shut-off valve shall be provided for each unit or for each plumbing fixture.~~
- ~~(e) Overcurrent Protection: Each unit shall have its own panel board for all electrical circuits which serve the unit.~~
- ~~(f) Impact Sound Insulation: Wall and floor-ceiling assemblies shall conform to the sound installation performance criteria promulgated in Title 25, California Administrative Code, Section 1092, or its successor, and may be only replaced by another floor covering that provides the same or greater insulation.~~

~~7.14.6 Prohibition of Discrimination Against Prospective Buyers with Children.~~

~~In no case shall a project which can reasonably accommodate children, as determined by the Planning Commission, limit initial sales to households or individuals without children.~~

~~7.14.7 Protection of Tenant Rights~~

~~Approval of a Conditional Use Permit for Condominium Conversion is subject to the City Council finding that the requirements of Section 66427.1 (a) and (b) of the California Subdivision Map Act have been completed in accordance with State Law. Said Sections deal with~~

- ~~(a) notice to tenant(s) of intention to convert, and~~
- ~~(b) (b) tenant(s) exclusive right to purchase their unit(s) upon the same terms and conditions that such unit(s) will be initially offered to the general public or terms more favorable to the tenant(s). (Ord. 38.692 (1) 8/2/94; Ord. 38.517, 9/2/80; Ord. 38.485, 7/3/79)~~

~~(7.14 through 7.14.7 (except 7.14.4), Ord 38.485, 7/3/79).~~

7.14 Moved Condominium Conversion regulations text to Section 54.19.

Section 8 R4 Multi-Family Very High Density District

Revise reference to the condominium conversion regulations:

8.04-8 Condominium conversion, subject to the regulations set forth in Section 7.1454.19. (Ord. 38.759 (part, 4/2/02)

28

General Provisions (Section 54)

Add to Section 54 (General Provisions section):

54.19 Condominium Conversions

54.19-1 Purpose -

The City of Milpitas is concerned with maintaining an adequate supply of housing for its citizens including rental housing. The adopted Housing Element of the Milpitas General Plan contains the following goal statements, pertinent to this matter:

- (a) To encourage the provision of a variety of individual choice of tenure, housing type, and location.
- (b) Within our ability, to provide opportunities for Milpitas citizens to meet their housing needs in the housing market.
- (c) To encourage the cooperation within the housing market so that suppliers and consumers can function more effectively, consistent with community growth goals.
- (d) That zoning is to be used in ways which will encourage variety and mix in housing types and provide adequate sites for housing persons of all races, ages, ethnic groups, and income levels in Milpitas. Housing is considered a basic necessity and any scarcity within the community area has both a direct and indirect adverse impact on public safety, health and welfare (including but not limited to, health and safety problems relating to the quality of housing). In times of low vacancy rate and high housing cost many people cannot afford to buy homes within the community or its nearby market area and are forced to rent housing in apartments or other multiple dwellings. The unregulated conversion of rental apartment units to condominiums ownership may aggravate such a serious situation and force citizens to move out of the community.

54.19-2 Declaration of Housing Shortage

When the number of vacant apartments being offered for rent or lease in the City is equal to or less than six (6) percent of the total number of such dwelling units offered for and under rental or lease agreement in the City,

a housing shortage exists which is inconsistent with the purposes of this chapter and with the declared goals of the City relating to its Housing Element of its adopted General Plan.

54.19-3 Determination of Vacancy Rate and Surplus

Whenever an application for a condominium conversion is filed, the Planning Division shall conduct a vacancy rate survey of the existing rental apartment dwelling units in the City. This survey shall be completed within forty-five (45) days from the date the application for condominium conversion is deemed complete.

54.19-4 Surplus Required for Conversion Application

An application for condominium conversion of existing multiple family rental housing units to residential condominium ownership shall not be approved unless there is a vacancy surplus of existing apartments which equals six (6%) percent or greater of the total number of such units, within the City, as of the most recent determination made pursuant to Section 7.14-3; and if all of the adult tenants lawfully in possession of two-thirds of the units indicate their desire to convert such project to condominium ownership, in writing, to the City. In no event shall a number of lots, parcels, units, or rights of exclusive occupancy proposed exceed the vacancy surplus by forty (40) percent. Nothing herein contained shall be construed to prevent the payment of any consideration by landlord to tenant, provided however, consent obtained by payment to a tenant shall not be considered by the Council to be a free and willing consent unless payment of the same consideration is made to all tenants regardless of consent.

54.19-5 Development Standards

The following standards are required for any Residential Condominium Conversion development.

- (a) Off-Street Parking: Conformance to the current off-street parking standards as contained in Section 7, "R3" Multi-Family District.
- (b) Landscape & Open Space: Conformance to the current landscape and open space requirements as contained in Section 7, "R3" Multi-Family District.

(c) Housing and Fire: Conformance to the current Housing codes and Fire Regulations of the City of Milpitas.

(d) Meters and Control Valves: The consumption of gas and electricity

within each unit shall be separately metered so that the unit owner can be separately billed for each utility. A water shut-off valve shall be provided for each unit or for each plumbing fixture.

(e) Overcurrent Protection: Each unit shall have its own panel board for all electrical circuits which serve the unit.

(f) Impact Sound Insulation: Wall and floor-ceiling assemblies shall conform to the sound installation performance criteria promulgated in Title 25, California Administrative Code, Section 1092, or its successor, and may be only replaced by another floor covering that provides the same or greater insulation.

54.19-6 Prohibition of Discrimination Against Prospective Buyers with Children.

In no case shall a project which can reasonably accommodate children, as determined by the Planning Commission, limit initial sales to households or individuals without children.

54.19-7 Protection of Tenant Rights

Approval of a Conditional Use Permit for Condominium Conversion is

subject to the City Council finding that the requirements of Section 66427.1 (a) and (b) of the California Subdivision Map Act have been completed in accordance with State Law. Said Sections deal with

(a) notice to tenant(s) of intention to convert, and

(b) tenant(s) exclusive right to purchase their unit(s) upon the same terms and conditions that such unit(s) will be initially offered to the general public or terms more favorable to the tenant(s). (Ord. 38.692 (1) 8/2/94; Ord. 38.517, 9/2/80; Ord. 38.485, 7/3/79)

(7.14 through 7.14-7 (except 7.14-4), Ord 38.485, 7/3/79).

(29)

- 7.09-6 There shall be provided off-street parking for automobiles in terms of design layout and sufficient quantity in accordance with the requirements of Section 53. All such parking spaces shall be improved as provided for in Subsection 54.03.

7.10 Trash and Storage Areas and Areas for Collecting and Loading Recyclable Materials

- 7.10-1 There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of subsection 54.15 of this Chapter. (Ord. 38.687 (1) (part), 2/19/94)

- 7.10-2 All outdoor storage and trash areas shall be within a completely enclosed building or behind a solid wall or tight board fence a minimum of six (6) feet in height.

7.11 Repealed by Ord 38.384, 10/26/76

7.12 Required Improvements

Parking and loading areas shall be improved as provided in Subsection 54.03.
(Ord 38.57, 6/18/64)

7.13 Corner Lots

On corner lots the side yard regulation shall be the same as for interior lots except on the street side of a corner or reversed corner lot, in which case the side yard shall not be less than fifty percent (50) percent of the front yard required on the lots in the rear of such corner lot, but such side yard need not exceed ten (10) feet, nor shall it be less than the side yard required on interior lots. (Ord 38.57, 6/18/64)

7.14 Condominium Conversions

7.14-1 Purpose -

The City of Milpitas is concerned with maintaining an adequate supply of housing for its citizens including rental housing. The adopted Housing Element of the Milpitas General Plan contains the following goal statements, pertinent to this matter:

- (a) To encourage the provision of a variety of individual choice of tenure, housing type, and location.
- (b) Within our ability, to provide opportunities for Milpitas citizens to meet their housing needs in the housing market.
- (c) To encourage the cooperation within the housing market so that suppliers and consumers can function more effectively, consistent with community growth goals.
- (d) That zoning is to be used in ways which will encourage variety and mix in housing types and provide adequate sites for housing persons of all races, ages, ethnic groups, and income levels in Milpitas. Housing is considered a basic necessity and any scarcity within the community area has both a direct and indirect adverse impact on public safety, health and welfare (including but not limited to, health and safety problems relating to the quality of housing). In times of low vacancy rate and high housing cost many people cannot afford to buy homes within the community or its nearby market area and are forced to rent housing in apartments or other multiple dwellings. The unregulated conversion of rental apartment units to condominiums ownership may aggravate such a serious situation and force citizens to move out of the community.

Section 43 TOD Transit Oriented Development Combining District
(Ord 38.759, 4/2/02)

43.01 Purpose and intent

The purpose of the Transit Oriented Development Combining District ("TOD") is to provide for land uses, land use densities and intensities and development standards that act to enhance and support transit and to locate such uses near rail transit stations. These provisions allow for a mix of goods and services within a convenient walk of the transit stations, encourage the creation of stable, attractive residential, commercial and industrial environments within the District and provide for a desirable transition to the surrounding conventional areas.

43.02 Applicability

The "-TOD" overlay can be combined with any zoning district on lands that are generally within a 2,000 foot walk from a rail transit station. If any of the regulations specified in the "-TOD" combining district differ from any corresponding regulations of any district with which the "-TOD" combining district is combined, then the provisions of the "-TOD" combining district shall govern.

43.03 Additional Conditional Uses

The following uses may be allowed on the ground floor of a mixed use or residential building if a Conditional Use Permit is granted by the Planning Commission:

43-03-1 Transit stations and parking.

43-03-2 Small-scale commercial uses—excluding Adult Businesses, as defined in Subsection 54.18, and drive-up or drive-in services—to serve residents and local pedestrian traffic and or transit users, such as dry cleaners, video rentals, day care centers and cafes.

43.04 Prohibited Uses

Vehicle oriented window service facilities are not allowed in the "-TOD" Combining District.

43.05 Development Standards

43.05-1 ~~North Midtown~~ "MXD-TOD" Area.

- (a) Residential developments shall be a minimum of thirty-one (31) dwelling units per gross acre and shall not exceed forty (40) dwelling units per gross acre. The minimum number of residential units may be reduced for parcels in the North Midtown Area that are less than twenty thousand (20,000) square feet
- (b) Residential building height shall not exceed four (4) stories and sixty (60) feet, including special architectural elements such as towers and spires.
- (c) The maximum FAR for non-residential buildings in the "MXD" District is one hundred percent (100%, or 1.0).

43.05-2 ~~South Midtown~~ "R4-TOD" Areas.

- (a) Residential developments shall be a minimum of forty-one (41) dwelling units per gross acre and shall not exceed sixty (60) dwelling units per gross acre.
- (b) Residential building height shall not exceed five (5) stories and seventy-five (75) feet, including special architectural elements such as towers and spires.
- (c) The maximum FAR for ground floor non-residential uses developed in conjunction with very high density multiple family residential in the "R4-TOD" District is fifty percent (50%, or 0.5).

43.05-3 "C2-TOD" Areas.

- (a) The maximum FAR in the "C2-TOD" District is one hundred percent (100%, or 1.0).

30

43.05-4 "M2-TOD" Areas.

- (a) The maximum FAR in the "M2-TOD" District is forty percent (40%, or 0.4).

30

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Section 63.06 Use Permit Revocation

Amend to allow revocation in cases where the use has been abandoned, and there is no public nuisance involved.

63.06 Revocation, Suspension, Modification

63.06-1 ~~_____~~ (a) The City Council shall have the power to revoke, suspend or modify any permit, variance or approval issued under the provisions of this Chapter (including, but not limited to conditional use permit, variances, or "S" Zone approval) for breach of any condition or requirement imposed upon the granting of said permit, variance or approval.

~~_____~~ (b) The Planning Commission shall have the power to revoke or modify a Use Permit under the provisions of this Chapter when a land use has been abandoned and/or a different permitted or conditional use is approved for the site. (Ord 38.92, 12/6/66)

2 (a) The revocation, suspension, or modification, of a land use permit, as per Subsection 63.03-1(a) above, shall only be made after written notice of violation is mailed to the holder of the permit. The permit holder shall be given an opportunity to explain why the permit should not be revoked, suspended or modified. The Planning Commission and City Council shall hold public hearings in accordance with Title XI, Chapter 10, Sections 64.01, 64.02 and 65 regarding said permit. After receiving the Planning Commission's recommendations on said permit, the City Council at its discretion may revoke, suspend or modify the previously issued permit upon making any of the following findings based on the evidence in the record: (Ord 38.706, 7/16/96)

- 1) There was a violation of a condition of the permit, and the violation was not abated, corrected or rectified within the time specified on the notice of violation;
- 2) There was a violation of law relating to the permit and the violation was not abated, corrected or rectified within the time specified on notice of violation;
- 3) The permit or approval is being exercised in a manner which creates a public nuisance; ~~or~~ or

4) ~~4) —~~ The permit or approval is being exercised in a manner which is contrary to the public health, safety and welfare.

(b) The revocation or modification of a Conditional Use Permit, as per Subsection 63.03-1(b) above, shall only be made after the Planning Commission holds a public hearing, per Section 64 of this Chapter, and makes the following finding:

1) The use for which the permit was issued has been abandoned in whole or in part for a period of at least eighteen (18) months, or a different permitted or conditional use is approved for the building or site.

3 Notice shall be given in accordance with the provisions of Section 64 of this Chapter. The hearing shall be held in accordance with the provisions of Section 65 of this Chapter. (Ord 38.92, 12/6/66, Ord 38.706, 7/16/96).

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acres or greater in area and including rentals and repair services only when incidental to the new automobile sales. (Ord 38.641, 10/11/88)

- 35.04-2 Automobile service stations with or without service bays. Entrances to the service bays shall not be open to the street but shall be so designed to face the rear or interior side property line. (Ord 38.662, 1/8/91)
- 35.04-2.1 Billiard center. (Ord 38.688, 3/15/94)
- 35.04-2.2 Car washes in conjunction with automobile service stations only. (Ord. 38.700, 6/20/95)
- 35.04-3 Deleted (Ord 38.702, 8-15-95)
- 35.04-4 Churches.
- 35.04-5 Commercial athletic facilities and health spas; such as tennis, handball, racquetball, etc.
- 35.04-5.1 Conference centers with compatible accessory facilities when said accessory facilities are found ancillary to the primary use. 33
- 35.04-5.2 Halls for Banquets, etc.; provided that the portion of any such facility actually used for banquets, etc. as opposed to being used for parking, is located not closer than five hundred (500) feet from any residentially zoned district or any area designated on the General Plan as being residential. (Ord 38.649, 12/5/89) 33
- 35.04-6 Motels and hotels (with or without restaurant and cocktail facilities which are designed to accommodate the guests and made an integral part of said motel or hotel), excluding Adult Businesses or Adult Motels/Hotels, as defined in Subsection 54.18. (Ord 38.711, 8/20/96)
- 35.04-7 Printing or stationary stores when found necessary to serve that industrial area.
- 35.04-8 Public and quasi-public uses.
- 35.04-9 Restaurant, restaurants which include internet usage for customers, or restaurants which includes the on-premise consumption of alcoholic beverages, when found clearly incidental to the primary food service. (Ord. 38.677, 1/5/93)
- 35.04-10 Temporary tract advertising signs.
- 35.04-11 Vehicle oriented window service .
- 35.04-12 Vocational schools, including business, professional, technical and trade schools where training is conducted in a classroom setting and educational credits, degrees or certificates of completion are earned or granted.

XI-10-35.05 Development Standards

- 35.05-1 Lot Area

Individual sites shall be of such size that all space requirements provided in this Section are satisfied.
- 35.05-2 Lot Width

One hundred (100) feet.

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19.02

- 18 Deleted (Ord. 38.710 08/06/96)
- 19 Janitorial services and window cleaning services.
- 20 Jewelry store. (Ord 38.637, 8/16/88)
- 21 Laundries and dry cleaning.
- 22 Mail box rentals. (Ord 38.637, 8/16/88)
- 23 Newspaper printing, printing, lithographing and publishing.
- 24 Medical or dental clinic and laboratory.
- 25 Music store or music instruction.
- 26 Offices: business, professional, administrative, medical, dental etc. (Ord 38.637, 8/16/88)
- 27 Photo finishing store.
- 28 Rentals: Sickroom supplies, costumes, and party equipment, etc. (Ord 38.637, 8/16/88)
- 29 Repairs, rental and distribution of office or business equipment.
- 30 Retail stores or businesses. (Ord 38.637, 8/16/88)
- 31 Shoe stores and repair. (Ord 38.637, 8/16/88)
- 32 Telephone answering service. (Ord 38.637, 8/16/88)
- 33 Telephone exchange. (Ord 38.637, 8/16/88)
- 34 Deleted (Ord. 38.705, 8/15/95; ~~Ord 38.637, 8/16/88~~)
- 35 Thrift store. (Ord 38.637, 8/16/88)
- 35.1 Tutoring centers
- 36 Upholstering shop, if conducted wholly within a completely enclosed building.
- 37 Deleted (Ord 38.697, 12/20/94)
- 38 Wholesale or discount merchandise broker, excluding exterior storage.
- 39 Other uses similar to the above as provided for in Subsection XI-10-54.02.

35

XI-10-19.03 Uses Permitted Subject to Securing a Conditional Use Permit

The following uses may also be permitted in their location if first approved by the Commission, as provided for in Section XI-10-57:

CITY OF MILPITAS

22.02-11	Dry Cleaners Store. (WA)
22.02-12	Florist Store. (WA)
22.02-13	Furniture Store. (WA)
22.02-14	Hardware Store. (WA)
22.02-15	Hobby Shop. (WA)
22.02-16	Household Repair Shop. (WA)
22.02-17	Jewelry Store. (WA)
22.02-18	Leather Goods or Luggage Store. (WA)
22.02-19	Locksmith Shop. (WA)
<u>22.02-19.1</u>	<u>Medical and Dental Office (EA, WA)</u>
22.02-20	Millinery Shop. (WA)
22.02-21	Music Store. (WA)
22.02-22	Offices: Business or Professional. (EA, WA)
22.02-23	Optician or Optometrist Store or Office. (EA, WA)
22.02-24	Photography Supply Store. (WA)
22.02-25	Picture Framing Shop. (WA)
22.02-26	Real Estates Office. (EA, WA)
22.02-27	Tailor or Dressmaking Store. (WA)
22.02-28	Shoe Store. (WA)
22.02-29	Shoe Repair Shop. (WA)
22.02-30	Sporting Goods Store. (WA)
22.02-31	Stamp or Coin Store. (WA)
22.02-32	Stationery Store. (WA)
22.02-33	Toy Store. (WA)
22.02-34	Travel Agency or Office. (EA, WA)
<u>22.02-35</u>	<u>Tutoring centers.</u>

35

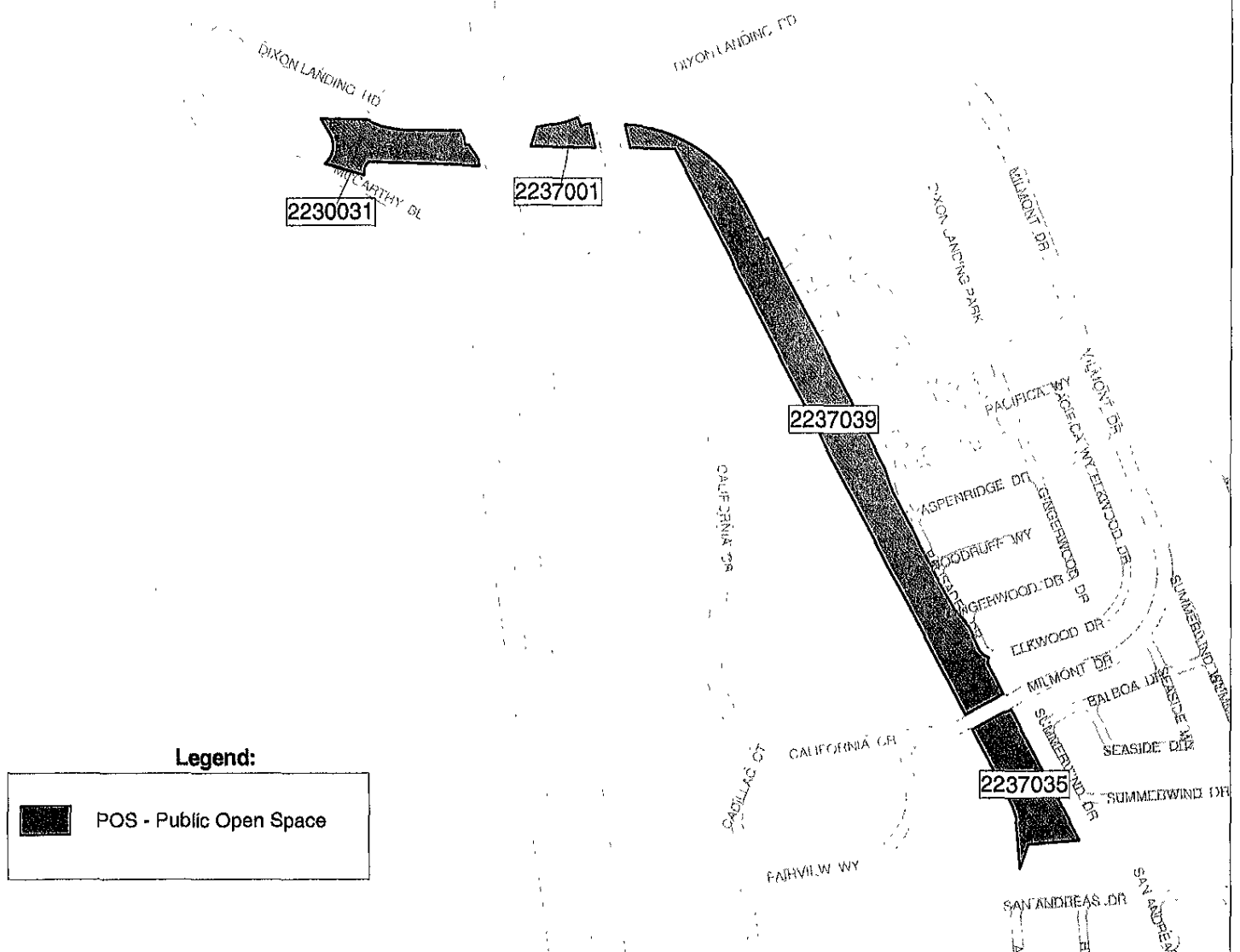
22.03 Accessory Uses

The following are the accessory uses permitted in all sub-areas of the "TC" District:

- 22.03-1 Signs appurtenant to any use in this District are regulated by Ordinance No. 124, Sign Ordinance, enacted as Chapter 30. Title XI of the Milpitas Municipal Code.

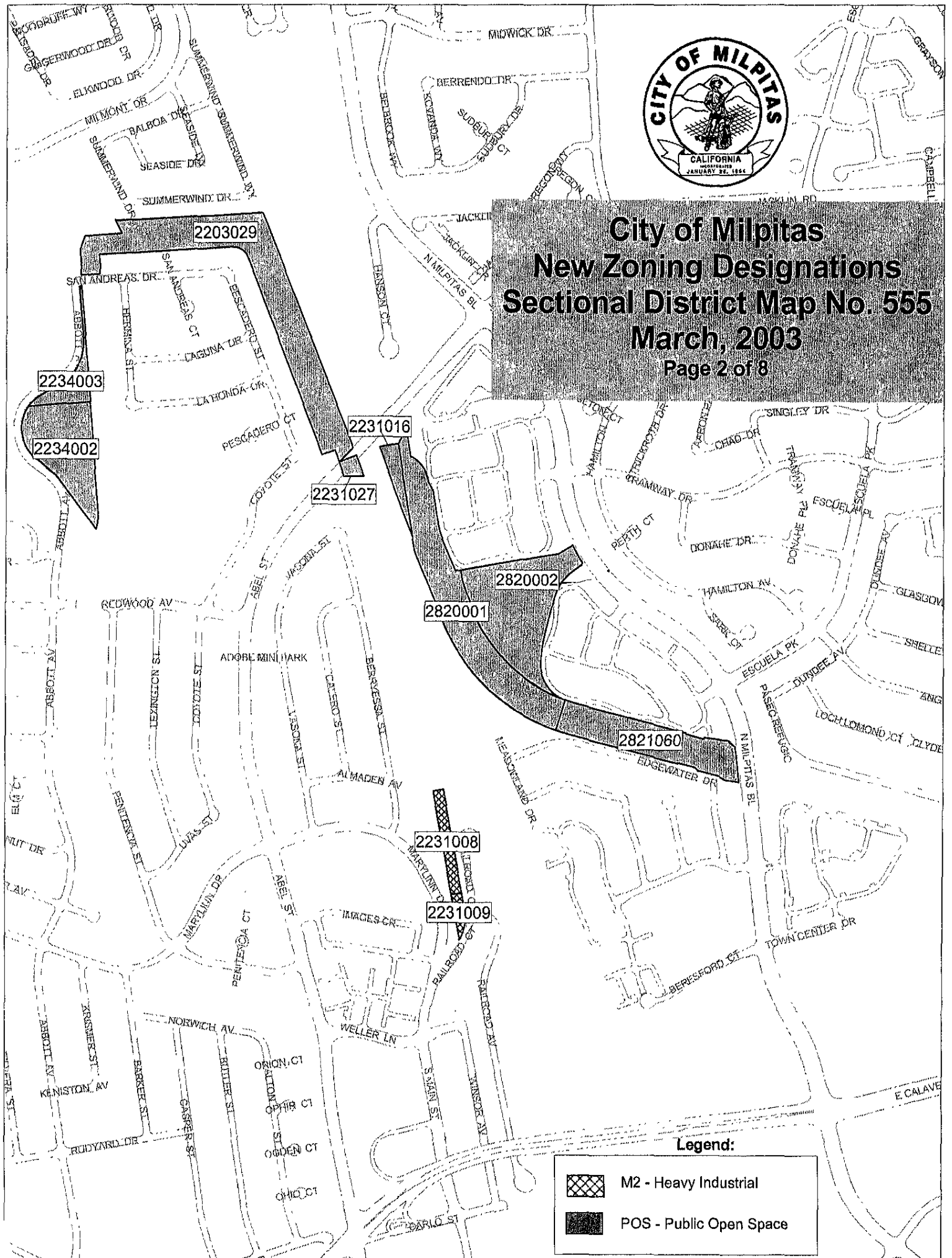


City of Milpitas
New Zoning Designations
Sectional District Map No. 555
March, 2003
Page 1 of 8





City of Milpitas
New Zoning Designations
Sectional District Map No. 555
March, 2003
Page 2 of 8



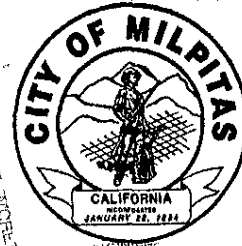
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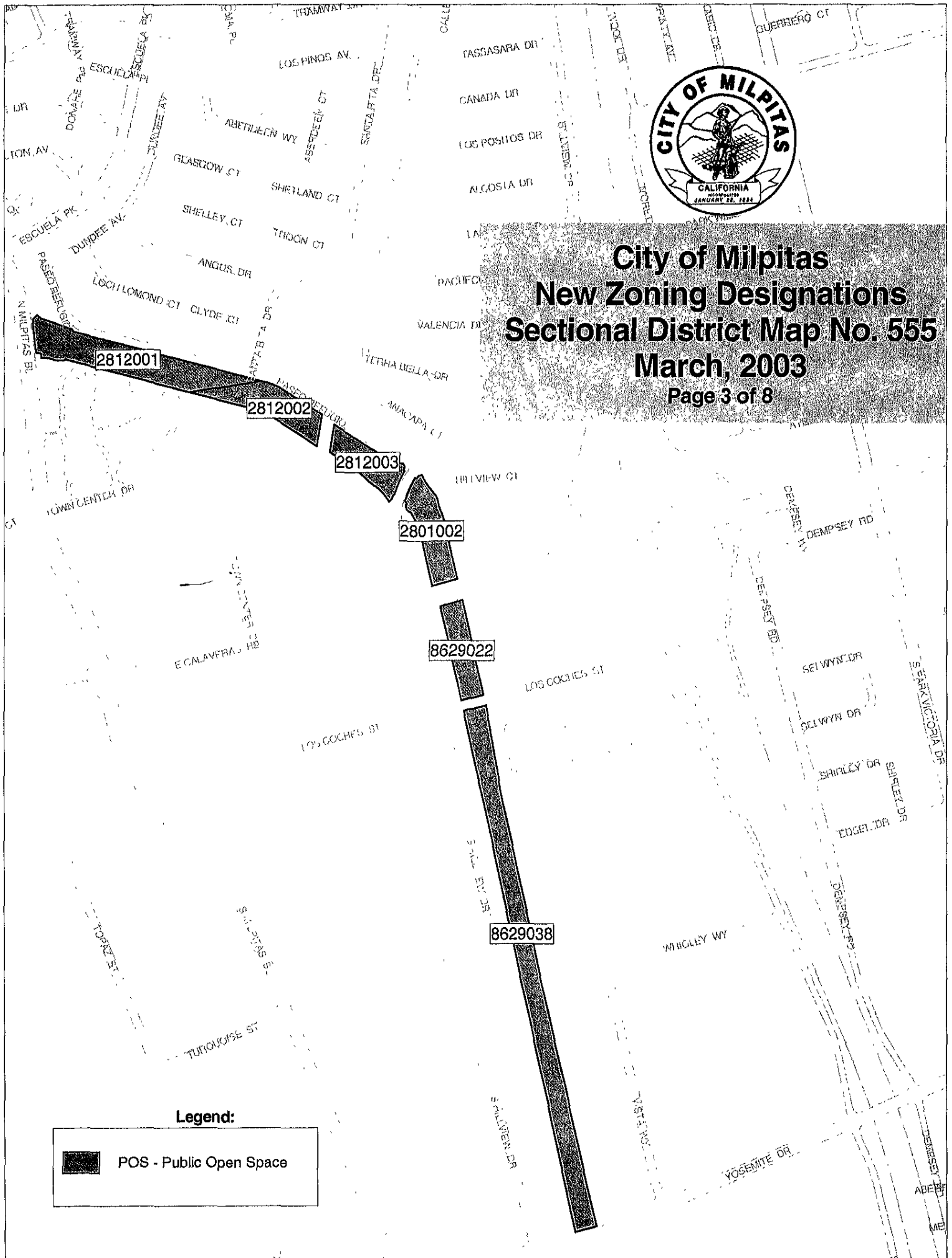
M2 - Heavy Industrial



POS - Public Open Space



City of Milpitas
New Zoning Designations
Sectional District Map No. 555
March, 2003
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Legend:



POS - Public Open Space



City of Milpitas
New Zoning Designations
Sectional District Map No. 555
March, 2003
Page 4 of 8

8630027

8630046

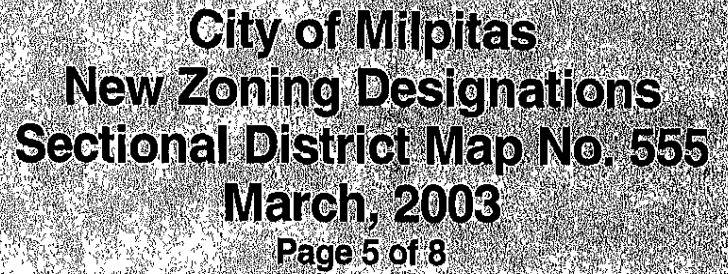
8630028

8632028

Legend:



POS - Public Open Space



Page 5 of 8



POS - Public Open Space

VALLEY WAY



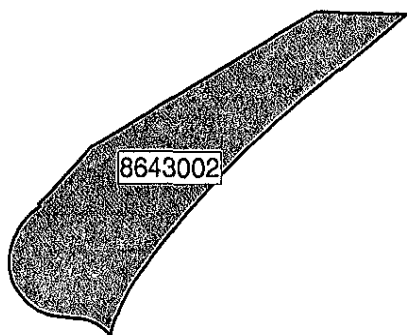
Legend:



POS - Public Open Space

**City of Milpitas
New Zoning Designations
Sectional District Map No. 555
March, 2003**

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WILLOW LANE

WILLOW LANE

WILLOW LANE

ALDER DR

BARBER LN

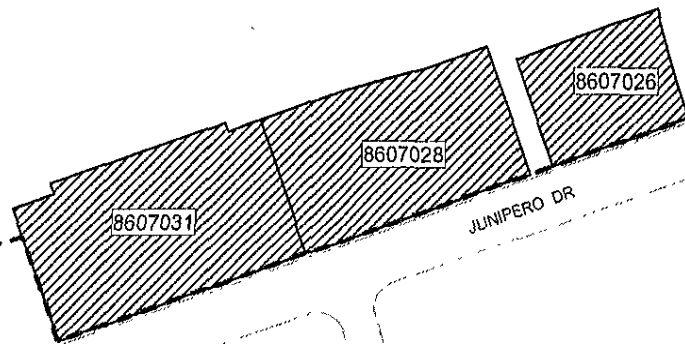
ALDER DR

TASMAN DR

SYCAMORE DR



City of Milpitas
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Legend:



Office Overlay



Midtown_boundary



CITY OF MILPITAS

Mailing Address: 455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479 • www.ci.milpitas.ca.gov
Temporary Location: 1210 Great Mall Drive

NEGATIVE DECLARATION **ENVIRONMENTAL IMPACT ASSESSMENT (EIA NO. P-EA2003-2)**

A NOTICE, PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970, AS AMENDED (PUBLIC RESOURCES CODE 21,000 ET SEQ.), THAT THE CITY OF MILPITAS WILL NOT HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT.

Project Title: Zone Text Amendment No. P-ZT2003-1, General Plan Map Amendment No. P-GM2003-1, & Zone Change No. P-ZC2003-1


Project Description: The City proposes to amend the Zoning Ordinance to regulate and clarify the following: definition of and provisions for wireless communication facilities; measuring setbacks; 30% maximum rear yard coverage for certain accessory uses and structures; tri-laminate asphalt composition roof material in all residential districts; multifamily housing as permitted use in TC district; Density Bonus provisions to comply with state law; group dwellings as conditional use in R3, R4, and MXD districts; tandem parking in R3, R4 and MXD districts; administrative citations; front yard setback in C1 district; duplexes in MXD district; medical and dental offices and clinics in commercial and industrial districts; definitions of and parking provisions for medical and dental offices, clinics and laboratories; covered tenant parking in residential districts; temporary office and storage trailers; hillside variance procedure; parking reduction in MXD-TOD; levels of "S" Zone approval for MXD zoning district; definitions of public use and quasi-public use; compact stalls in C1, C2, CO, R3, R4 and MXD districts; joint use parking agreements for two or more parcels and condominiums; second family units in R1 districts; parking areas and floor area ratio calculation; large family child care homes as permitted uses in residential districts and related definitions; condominium conversions in R4, MXD and TC districts; floor area ratios for M2-TOD and C2-TOD districts; tutoring centers in C1, C2 and TC districts; in-lieu housing fees for all residential developments; use permit modification revocation procedure, and defining and adding conference centers to the MP district. The City also proposes the following General Plan, Midtown Specific Plan and zoning map amendments: rezoning parcels 2231009 and 2231008 to the M2 (Heavy Industrial) district; 2234002, 2234003, 2237039, 2237035, 2203029, 2820001, 2820002, 2231016, 2821060, 2812001, 2812002, 2812003, 2801002, 8629022, 8629038, 8630027, 8630046, 8630028, 8632028, 8643002, 8613001, 8822011 to POS (Park/Public Open Space) district; and adding 8607026, 8607028, 8607031 to the Midtown Specific Plan Area and adding the OO (Office) overlay.

Project Location: Citywide (City of Milpitas), County of Santa Clara.

Project Proponent: City of Milpitas, 455 East Calaveras Boulevard, Milpitas, CA 95035.

The City of Milpitas Environmental Impact Committee has reviewed the Environmental Impact Assessment for the above project based on the information contained in the Environmental Information Form and the Initial Study, the Committee finds that the project will have no significant impact upon the environment, as recommended in the EIA.

Copies of the E.I.A. may be obtained at the Milpitas Planning Department, 455 E. Calaveras Boulevard, Milpitas, CA 95035.

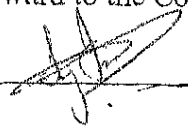
By: 
Planning Director-Manager

By: 
Project Planner

Approved by the Planning Commission / City Council

_____ day of _____, 2003

Forward to the County Clerk on this 12th day of March, 2003

By: 



**ENVIRONMENTAL
IMPACT ASSESSMENT NO: P-EA2003-2**

Planning Division

455 E. Calaveras Blvd., Milpitas, CA 95035

(408) 586-3279

Prepared by: Troy Fujimoto

March 12, 2003
date

Title: Assistant Planner

1. Project title: Zone Text Amendment No. P-ZT2003-1, Zone Change No. P-ZC2003-1 and General Plan Map Amendment No. P-GM2003-1
2. Lead Agency Name and Address: City of Milpitas, 455 East Calaveras Boulevard, Milpitas, CA 95035
2. Project location: Citywide
3. Project sponsor's name and address:
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
Contact: Staci Pereira (408-586-3287)
4. General plan designation: Citywide General Plan Designations
5. Zoning: Citywide Zoning Districts
6. Description of project: (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary.)
See Attached
7. Surrounding land uses and setting: Briefly describe the project's surroundings:
See Attached
8. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement.)
N/A

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages:

☐

Aesthetics

☐

Agriculture Resources

☐

Air Quality

☐

Biological Resources

☐

Cultural Resources

☐

Geology / Soils

WILL THE PROJECT:	IMPACT					Source
	Cumulative	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact	
I. AESTHETICS:						
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11,17, 18
b) Substantially damage scenic resources, including, but not limited to trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11,17, 18
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11,17, 18
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the areas?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11,17, 18
II. AGRICULTURE RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:						
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11, 17
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11, 17
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11, 17

WILL THE PROJECT:	IMPACT					Source
	Cumulative	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No impact	
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11, 17
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11, 17
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11, 18
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11, 18
V. CULTURAL RESOURCES: Would the project:						
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11, 14
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11, 14
c) Directly or Indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11, 14
d) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11, 14
VI. GEOLOGY AND SOILS: Would the project:						
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	8,11

WILL THE PROJECT:	IMPACT					Source
	Cumulative	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact	
d) Be located on a site which is included on a list of hazardous materials compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	18
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17, 18
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17, 18
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	18
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	18
VIII. HYDROLOGY AND WATER QUALITY:						
a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	18
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	18, 20
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or situation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	18
d) Substantially alter the existing drainage						18

WILL THE PROJECT:	IMPACT					Source
	Cumulative	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact	
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11, 12
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11
X. MINERAL RESOURCES:						
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11
XI. NOISE:						
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11, 18
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11, 18
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11, 18
d) A substantial temporary or periodic in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11, 18

WILL THE PROJECT:	IMPACT					Source
	Cumulative	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No impact	
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11, 18
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have been an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11, 18
XV. TRANSPORTATION/TRAFFIC: Would the project:						
a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	12,17, 18
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	12,17, 18
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17, 18
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	18
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	18
f) Result in inadequate parking capacity?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	12,17, 18,23

WILL THE PROJECT:	IMPACT					
	Cumulative	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact	Source

XVII. MANDATORY FINDINGS OF SIGNIFICANCE:						
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or pre-history?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	10,18,19,20,26
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11,12,17,18,19,20,21,22
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	9,11,12,18

**CITY OF MILPITAS ZONE TEXT AMENDMENT NO. P-ZT2003-1,
GENERAL PLAN MAP AMENDMENT NO. P-GM2003-1, &
ZONE CHANGE NO. P-ZC2003-1
ENVIRONMENTAL IMPACT ASSESSMENT (EIA NO. P-EA2003-2)
INITIAL STUDY**

Project Description

The proposed Zoning Text Amendment No. P-ZT2003-1 (Ordinance No. 38.761), Zone Change No. P-ZC2003-1 and General Plan Map Amendment No. P-GM2003-1, provides regulations and clarifications related to the following:

1. Amateur radio antenna, receive-only radio and television, satellite dishes, and temporary wireless communication facilities (news or public information) standards and allowing as an accessory use provided that certain conditions are met;
2. Clarifying whether measuring setbacks shall be from the wall or eave for main buildings;
3. Excluding in-ground pool, in-ground spas, and associated decking from the 30% maximum rear yard coverage requirement, and including above ground pools and spas in the requirement;
4. Codify recent determination that tri-laminate asphalt composition roof material is allowed in PUD, S-Zone residential uses, and hillside areas.
5. Woodshake roofing material will not be allowed Citywide, unless a development standard;
6. As per recent approved Housing Element, allow housing densities of 21 to 40 units per acre as a permitted use in the Town Center (TC) zoning district;
7. Delete the density bonus (DB) combining district and instead allow in all districts where housing is allowed to be consistent with State law;
8. Define "group dwellings" to include homeless shelters and transitional housing as a conditionally permitted use in the R-3, R-4 and MXD zoning districts;
9. Allow tandem parking in R-3, R-4 and MXD zoning districts with certain requirements;
10. Add provisions for enforcing the zoning code through an administrative citation process;
11. Clarify the C-1 front yard setback as 20 feet;
12. Prohibit duplexes in the MXD zoning district;
13. Distinguish between medical and dental offices from professional offices in all affected zoning districts and allow medical and dental clinics as a conditional use in the C-1 zoning district;
14. Provide a definition of medical and dental office, clinics, and laboratories. Provide parking requirements for medical clinics and laboratories;

33. Provide a definition for conference centers and allow as conditional use in the MP zoning district;

34. Update table of contents for zoning ordinance.

Overall the Zone Text Amendments will tighten zoning regulations, clarify unclear sections of the zoning ordinance and add slightly more dwelling units throughout the City.

In addition the proposed Zone Changes and General Plan Map Amendments will rezone portions of existing parks that are zoned residential to a park/public open space zoning. In addition, an "Office" overlay and Midtown Plan standards and guidelines will apply to 3 existing C-2 (General Commercial) parcels (approximately 3 acres).

Project Location

The proposed Zone Text Amendments would affect various land uses in the City of Milpitas, (approximately 13.64 square miles), generally bounded by the City of San Jose to the east and south, the City of Fremont to the north and County of Santa Clara unincorporated land to the west.

The general makeup of the city includes mostly single-family residential uses in the western half of the City, industrial uses to the south, southwest and northwest and commercial uses to the south and west and interspersed throughout the residential areas. Major thoroughfares include Interstates 680 and 880 running north to south and State Highway 237 running east to west.

The proposed Zone Changes and General Plan Map Amendments would occur at various locations throughout the City. The zone changes and map amendments can be separated into three (3) categories, those associated with the Berryessa Creek Trail, Serra Center parcels, and corrections for errors that were found when the City moved from an area based land use map to a GIS based map.

Berryessa Creek Trail

- The entire length of Berryessa Creek (north/south) through the City of Milpitas which is proposed to be rezoned to Park/Public Open Space (POS) due to the establishment of a trail in the creek corridor.

Serra Center

- The City proposes to add an "office overlay, [OO]" to three parcels at the northwest corner of Junipero Drive and Main Street that are a part of Serra Center (a total approximate of 2.5 acres) located at the intersection of Serra Way and Calaveras Boulevard. These parcels were inadvertently left out when the City adopted the Midtown Plan.

Corrections associated with conversion of City Zoning Map

- A portion of Coyote Creek near State Highway 237 (SR237), currently zoned Agriculture, to be rezoned to Park/Public Open Space.
- Railroad property currently zoned as Park/Public Open Space, to be rezoned to Heavy Manufacturing.

application process, at which time any impacts will be further analyzed, thus the impact will be less than significant.

The proposed zone change to add the office overlay to the Serra Center parcels will allow an increase in height for future projects (potentially up to eight (8) stories and 115 feet, which could degrade the existing visual character. However, all of the proposed parcels are adjacent to existing zoning that has the same office overlay. Thus, the increase in height will be compatible with existing parcels. In addition, because any development on those parcels will have to adhere to Midtown Plan policies, it is required to meet high design standards, which will not degrade the character or quality of the site. Thus this can be considered a less than significant impact.

Response to Question 1d:

"Will the project create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?"

The ordinance amendments discussed above (Ordinance No. 38.761, No. 1, 7, and 25) all may increase the number of and increase the size of structures throughout the city. The type of structures associated with amendment No. 1 are not associated with producing significant amounts of light or glare. The structures associated with amendments No. 7 and No. 25 will have further review as part of the project approval, at that time any impacts associated with light or glare will be further analyzed, thus this impact can be considered less than significant.

The proposed zone change to add the office overlay to the Serra Center parcels will allow an increase in height for future projects (potentially up to eight (8) stories and 115 feet, which could be a new source of light or glare. However, all of the proposed parcels are adjacent to existing zoning that has the same office overlay. Thus, the addition of these three parcels will minimally add to the light or glare. In addition, one of the Midtown Plan development standards is to minimize the use of glass and other reflective building materials, which will help to minimize glare. As part of the design review process, potential impacts will be reduced to a less than significant impact.

Cumulative Impacts on Aesthetics:

See sections above.

Air Quality

Response to Question 3c:

"Will the project result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?"

The primary contribution to air quality impacts within the City of Milpitas is traffic congestion. The ordinance amendment (Ordinance No. 38.761, No. 7) to allow density bonuses throughout the City may add pollutants, however, vehicle impacts will be analyzed for any project wishing to take advantage of a density bonus, and at that time further review of air quality impacts will occur, thus this will be a less than significant impact.

increasing the amount of surface runoff. When the development application comes before the City, a non-point surface runoff plan will be required and further review and mitigation will be required of the project to mitigate any runoff concerns, thus this can be considered a less than significant impact.

Response to Question 8e:

"Will the project create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff as it relates to C3 regulations for development?"

The ordinance amendment in regards to in-ground swimming pools and in-ground spas being exempt from the 30% maximum rear yard coverage in residential zoning districts (Ordinance No. 38.761, No. 3) will slightly increase the amount of surface runoff, however, because pools hold runoff, this is expected to be a less than significant impact.

The ordinance amendment in regards to FAR (Ordinance No. 38.761, No. 24 and 28) will have minimal impacts on the allowed building coverage. In addition, the FAR limits associated with Ordinance No. 28 will only affect two parcels. When a project is proposed, further review will be required for any modifications to the site, thus, this is expected to be a less than significant impact.

The proposed zone change to add the office overlay to the Serra Center parcels could potentially increase the density of the site, which may result in an increase of pervious surfaces and increase the amount of polluted runoff. When the development application comes before the City, further review of the runoff and drainage impacts will be analyzed and mitigation proposed, which will reduce any impacts to less than significant.

Response to Question 8h:

"Will the project place within a 100-year flood hazard area structures which would impede or redirect flood flows?"

The ordinance amendments and Serra Center parcel rezone could result in a small increase in new structures and larger buildings throughout the city, in locations with a 100-year flood hazard. However, any new structures built within the flood zone area are built according to standards as required by the City Municipal Code for flood potential. Thus this is considered a less than significant impact.

Cumulative Impacts to Hydrology and Water Quality

See section above.

Noise

Response to Question 11a:

"Will the project exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?"

The proposed zoning ordinance amendments may add additional residents throughout the City near noise generators, such as streets. All projects within the City are required to be in compliance with the Noise Element, which accounts for compatible uses and noise

"Would the project cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system?"

"Would the project exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?"

The proposed zoning ordinance amendment to clarify medical office and clinic parking standards to the off-street parking provisions (Ordinance No. 38.761, No. 14) does not have an impact on traffic in the City or level of service standards (does not add increased traffic as a result of the ordinance amendment), it only clarifies the parking required for this type of use.

The proposed zoning ordinance amendment to allow residential projects from 25 to 40 units per acre as a permitted use in the Town Center zoning district (Ordinance 38.761, No. 6) can be considered a less than significant impact, as densities up to 40 units per acre are currently allowed as a conditional use. The requirement to analyze and mitigate any traffic impacts will still be required as part of the development application process, thus this impact is not considered significant.

The proposed zoning ordinance amendment to allow density bonuses throughout the City (Ordinance 38.761, No. 7) can be considered a less than significant impact as any project that uses a density bonus will have the requirement to analyze and mitigate any traffic impacts associated with the proposed project.

The proposed zoning ordinance amendments (Ordinance 38.761, No. 24 & 28) could potentially add increased traffic to the street system, however, they can be considered a less than significant impact because No. 24 (FAR calculation) is only providing clarification for calculating FAR and the impacts of No. 28 (setting FAR limits for M2-TOD and C2-TOD zoning districts) were covered in a separate previous environmental document (Midtown Specific Plan EIR), but inadvertently left out of the zoning ordinance. In addition, the requirement to analyze and mitigate any traffic impacts is required as part of the development application process, thus this impact is not considered significant.

The proposed zone change to add the office overlay to the Serra Center parcels will allow an increase in density (up to 1.5 FAR), which could allow more dense developments on the affected parcels. However, as required, with all Midtown projects a site specific traffic analysis will be required of all development applications, thus this can be considered a less than significant impact.

Response to Question 15f:

"Would the project result in inadequate parking capacity?"

The proposed zoning ordinances to allow large family child care centers as a permitted use in the R-1, R-2, R-3, R-4 and MXD zoning districts (Ordinance No. 38.761, No. 25) can be considered a less than significant impact since child care center users normally only drop off and pick up people, not necessarily parking for any extended lengths of time. In addition recent State law mandates that child care facilities be a permitted use superseding any discretionary action that the City once had.

population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or pre-history?"

The potential for adverse effects on the natural and wildlife environment were discussed in the above sections (under "Hydrology", "Biological Resources", and "Water Quality").

Response to Question 17b:

"Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?"

Cumulative impacts on Aesthetics were discussed above in response to Question 1, Hydrology and Water Quality were discussed above in response to Question 8, Transportation and Traffic were discussed above in response to Question 15, and Utility and Service Systems were discussed in response to Question 16.

Response to Question 17c:

"Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?"

The project's potential for adverse effects on humans were discussed above (under "Air Quality", "Noise", and "Recreation")